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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:

MOTOROLA 52<sup>ND</sup> STREET SUPERFUND SITE

Phoenix Newspapers, Inc.  
120 East Van Buren  
Phoenix, AZ

RESPONDENT

Proceeding Under Sections 104, 122(a),  
and 122(d)(3) of the Comprehensive  
Environmental Response, Compensation,  
and Liability act as amended  
(42 U.S.C Sections 9604, 9622(a),  
9622(d)(3).

U.S. EPA Docket No. 2004-31

ADMINISTRATIVE ORDER ON CONSENT

FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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## 5 I. INTRODUCTION

6 1. This Administrative Order on Consent ("Consent Order") is entered into  
7 voluntarily by the United States Environmental Protection Agency (EPA) and Phoenix  
8 Newspapers, Inc. ("Respondent"). The Consent Order concerns the preparation and performance  
9 of, and reimbursement for all costs incurred by EPA in connection with, a Focused Remedial  
10 Investigation and Feasibility Study ("Focused RI/FS") for the Phoenix Newspapers, Inc. Site  
11 ("Site"), located within the third operable unit of the Motorola 52<sup>nd</sup> Street Superfund Site in  
12 Phoenix, Arizona.

## 13 II. JURISDICTION AND GENERAL PROVISIONS

14 2. This Consent Order is issued under the authority vested in the President of the  
15 United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental  
16 Response, Compensation, and Liability act, as amended, 42 U.S.C. Sections 9604, 9622(a),  
17 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January  
18 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926, further delegated to Regional  
19 Administrators on September 13, 1987, by EPA Delegation No. 14-14-c, and further redelegated  
20 to Region IX Superfund Branch Chiefs by the Regional Administrator of Region IX on  
21 September 25, 1997.

22 3. The Respondent agrees to undertake all actions required by the terms and  
23 conditions of this Consent Order. In any action by EPA or the United States to enforce the terms  
24 of this Consent Order, Respondent consents to and agrees not to contest the authority or  
25 jurisdiction of the Superfund Branch Chief to issue or enforce this Consent Order, and agree not  
26 to contest the validity of this Consent Order or its terms.

27 4. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§  
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4 9604(b)(2) and 9622(j)(1), EPA notified the Arizona Department of Environmental Quality,  
5 Arizona Game and Fish Department, U.S. Department of Defense, U.S. Department of Interior,  
6 National Oceanic and Atmospheric Administration, and U.S. Department of Agriculture on  
7 September 3, 2003 and the U.S. Department of Energy on October 3, 2003 of negotiations with  
8 potentially responsible parties regarding the release of hazardous substances that may have  
9 resulted in injury to the natural resources under Federal and State trusteeship.

### 10 **III. PARTIES BOUND**

11 5. This Consent Order shall apply to and be binding upon EPA and shall be binding  
12 upon the Respondent, its agents, successors, assigns, officers, directors and principals.

13 Respondent is responsible for carrying out all actions required of it by this Consent Order.

14 Respondent's signatory to this Consent Order certifies that he/she is authorized to execute and  
15 legally bind the party he/she represents to this Consent Order. No change in the ownership or  
16 corporate status of the Respondent or of the Site shall alter Respondent's responsibilities under  
17 this Consent Order.

18 6. Respondent is liable for carrying out all activities required by this Consent Order.

19 7. Respondent shall provide a copy of this Consent Order to all primary contractors,  
20 and consultants that are retained to plan, direct or manage any work performed under this  
21 Consent Order, within 14 days after the effective date of this Consent Order or the date of  
22 retaining their services, whichever is later. Respondent shall provide a copy of the Focused  
23 RI/FS Workplan to subcontractors and laboratories that conduct any work performed under this  
24 Consent Order. Respondent shall condition any contracts upon satisfactory compliance with this  
25 Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for  
26 compliance with this Consent Order and for ensuring that its subsidiaries, employees,  
27 contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.  
28

#### 5 IV. STATEMENT OF PURPOSE

6 8. In entering into this Consent Order, the objectives of EPA and the Respondent  
7 are: (a) to determine the nature and extent of contamination and any threat to the public health,  
8 welfare, or the environment caused by the release or threatened release of hazardous substances,  
9 pollutants or contaminants originating from the Site, by conducting a remedial investigation; (b)  
10 to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or  
11 otherwise respond to or remedy any release or threatened release of hazardous substances,  
12 pollutants, or contaminants originating from the Site, by conducting a feasibility study (if  
13 needed); and (c) to recover response costs incurred by EPA with respect to the Site. The  
14 objectives of the parties do not obligate the Respondent to determine under this Consent Order  
15 the nature and extent of, or be responsible for EPA's response costs with respect to,  
16 contamination or any threat to the public health, welfare, or the environment caused by hazardous  
17 substances, pollutants or contaminants released from any off-Site source.

18 9. The activities conducted under this Consent Order are subject to approval by EPA  
19 and shall provide all appropriate necessary information for the Focused RI/FS, and for a record of  
20 decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R.  
21 Part 300. The activities conducted under this Consent Order shall be conducted in compliance  
22 with all applicable EPA guidance, policies, and procedures.

#### 23 V. DEFINITIONS

24 10. Unless otherwise expressly provided herein, terms used in this Consent Order which  
25 are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning  
26 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in  
27 this Consent Order or in the appendices attached hereto and incorporated hereunder, the  
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4 following definitions shall apply:

5 a. "CERCLA" shall mean the Comprehensive Environmental Response,  
6 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

7 b. "Consent Order" shall mean this Administrative Order on Consent, the  
8 Statement of Work, all appendices attached hereto listed in Section XXX (Severability/  
9 Integration/Appendices) and all documents incorporated by reference into this document  
10 including without limitation EPA-approved submissions. EPA-approved submissions are  
11 incorporated into and become a part of the Consent Order upon approval by EPA. In the event of  
12 conflict between this Consent Order and any Appendix, this Consent Order shall control.

13 c. "Day" shall mean a calendar day. In computing any period of time under this  
14 Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the  
15 period shall run until the close of business of the next working day.

16 d. "Effective Date" shall be the effective date of this Consent Order as provided  
17 in Section XXXII (Effective Date).

18 e. "EPA" shall mean the United States Environmental Protection Agency and any  
19 successor departments or agencies of the United States.

20 f. "Future Response Costs" shall mean all costs, including, but not limited to,  
21 direct and indirect costs, that the EPA incurs in connection with the Site in reviewing or  
22 developing plans, reports and other items pursuant to this Consent Order, verifying the Work, or  
23 otherwise implementing, overseeing, or enforcing this Consent Order, including but not limited  
24 to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to  
25 Paragraph 53 (costs and attorneys fees and any monies paid to secure access, including the  
26 amount of just compensation), Paragraph 35 (emergency response) and Paragraph 85 (Work  
27 takeover).

28 g. "Interest" shall mean interest at the rate specified for interest on investments of



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4 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded  
5 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate  
6 of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject  
7 to change on October 1 of each year.

8 h. "Motorola 52<sup>nd</sup> Street Superfund Site" shall mean Operable Units 1, 2, and 3 of  
9 the Motorola 52<sup>nd</sup> Street Superfund Site, located within the approximate boundaries of 52<sup>nd</sup> Street  
10 to the east, 7<sup>th</sup> Avenue to the west, McDowell Road to the north and Buckeye Road to the  
11 southwest, and depicted generally on the map, attached as Appendix B.

12 i. "National Contingency Plan " or "NCP" shall mean the National Oil and  
13 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of  
14 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

15 j. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic  
16 numeral.

17 k. "Parties" shall mean EPA and Respondent.

18 l. "Past Response Costs" shall mean all costs, including, but not limited to, direct  
19 and indirect costs, that the EPA paid in connection with the Site through June 30, 2004, plus  
20 Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

21 m. "Respondent" shall mean Phoenix Newspapers, Inc.

22 n. "Section" shall mean a portion of this Consent Order identified by a Roman  
23 numeral.

24 o. "Site" shall mean the former Phoenix Newspapers, Inc. facility, located at 120  
25 East Van Buren Street in Phoenix, Arizona, within the Motorola 52<sup>nd</sup> Street Superfund Site.

26 p. "Statement of Work" or "SOW" shall mean the Statement of Work for  
27 development of a Focused RI/FS for the Site, as set forth in Appendix A to this Consent Order.  
28 The Statement of Work is incorporated into this Consent Order and is an enforceable part of this

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4 Consent Order as are any modifications made thereto in accordance with this Consent Order.

5 q. "Waste Material" shall mean (1) any "hazardous substance" under Section  
6 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section  
7 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of  
8 RCRA, 42 U.S.C. § 6903(27).

9 r. "Work" shall mean all activities Respondent is required to perform under this  
10 Consent Order and Statement of Work.

## 11 VI. FINDINGS OF FACT

12 11. The Motorola 52<sup>nd</sup> Street Site is located in Phoenix, Arizona and was listed on the  
13 EPA Superfund National Priorities List on October 4, 1989, pursuant to Section 105 of  
14 CERCLA, 42 U.S.C. §9605. Releases of hazardous substances, primarily volatile organic  
15 compounds such as trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), and trichloroethane  
16 ("TCA"), from various facilities within the site boundaries have contributed to the groundwater  
17 contamination at the Motorola 52<sup>nd</sup> Street Site. The response activities are conducted in three  
18 operable unit study areas.

19 12. The Phoenix Newspapers, Inc. ("Site") is located at 120 East Van Buren Street,  
20 Phoenix, Arizona. The Site is located in the third operable unit study area of the Motorola 52<sup>nd</sup>  
21 Street Site.

22 13. Respondent purchased the Site in 1946 and conducted newspaper printing  
23 activities at a portion of the Site from 1948 until 1992. Respondent sold a portion of the Site in  
24 1948 and re-purchased that portion of the Site in 1967. Respondent sold the entire Site in 1999  
25 to Sterling Network Exchange, LLC for commercial use.

26 14. The groundwater within operable unit three is contaminated with VOCs above the  
27 Federal and State drinking water standards including, TCE , PCE, and VOC degradation by-  
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4 products, cis-1,2-dichloroethylene and 1,1-dichloroethylene. TCA, as well as additional VOC  
5 degradation by-products such as 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-  
6 dichloroethylene, and vinyl chloride have also been detected.

7 15. Based on material safety data sheets (MSDS) maintained at the Site, some of the  
8 products used by Respondent for cleaning and maintenance activities contained VOCs such as  
9 TCE, TCA, and 1,4-Dioxane. According to the Preliminary Assessment Report for the Site  
10 prepared by the Arizona Department of Environmental Quality, Respondent used products  
11 containing TCA and PCE. Respondent owned a water supply well located along the eastern edge  
12 of the basement. Two water samples collected in November and December 1986 contained TCE,  
13 PCE, TCA, and 1,1-DCE concentrations of up to 245 ug/L, 2.7 ug/L, 4.7 ug/L, and 7.3 ug/L,  
14 respectively. In 1993, soil and fill samples were collected beneath the basement floor at 17  
15 locations; one of the fill samples analyzed contained detectable concentrations of TCE (0.09  
16 mg/kg), PCE (0.03 mg/kg), and TCA (0.02 mg/kg). None of the soil samples collected below the  
17 floor contained detectable concentrations of VOCs.

18 16. In April 1999, soil gas samples were collected at 36 locations in the basement and  
19 subbasement. Soil gas samples were collected adjacent to or within dry wells. TCA and PCE  
20 were detected in samples from all 36 locations and TCE was detected at 24 locations. The  
21 maximum concentrations of TCA, PCE, and TCE in soil gas were 0.5 ug/L, 0.1 ug/L, and 0.8  
22 ug/L respectively. In June and July 1999, Respondent conducted the additional dry well  
23 investigations. Sediment from the dry wells and soil below the dry wells was excavated and  
24 removed until metal and PCB concentrations in soil were below Arizona Soil Remediation  
25 Levels. The dry wells were subsequently decommissioned on October 27, 1999 with ADEQ  
26 approval.

27 17. Respondent is incorporated in the State of Arizona and conducts business in  
28 Phoenix.

5 **VII. CONCLUSIONS OF LAW AND DETERMINATIONS**

6 18. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.  
7 Section 9601(9).

8 19. TCE, TCA, and PCE found at the Site, as identified in the Findings of Fact above  
9 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section  
10 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and  
11 substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

12 20. The presence of hazardous substances at the Site or the past, present or potential  
13 migration of hazardous substances currently located at or emanating from the Site where the Site  
14 is the source of the hazardous substance(s), constitute a "release" or threat of "release" as  
15 defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

16 21. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C.  
17 Section 9601(21).

18 22. Respondent was the owner and/or operator of the Facility, as defined by Section  
19 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(1) or (2)  
20 of CERCLA, 42 U.S.C. §9607(a)(1) or (2) and may be a responsible party under Sections 104,  
21 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

22 23. The actions required by this Consent Order are necessary to protect the public  
23 health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a), are  
24 consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will  
25 expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).  
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27  
28

4 **VIII. ORDER**

5 24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations,  
6 and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent  
7 shall comply with all provisions of this Consent Order, including, but not limited to, all  
8 attachments to this Consent Order and all documents incorporated by reference into this Consent  
9 Order. By signing this Consent Order and taking actions under this Consent Order, the  
10 Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law.  
11 Furthermore, the participation of Respondent in this Consent Order shall not be considered an  
12 admission of liability and is not admissible in evidence against Respondent in any judicial or  
13 administrative proceeding other than a proceeding by the United States, including EPA, to  
14 enforce this Consent Order or a judgment relating to it.

15 **IX. WORK TO BE PERFORMED**

16 25. Selection of Contractors, Personnel. All work performed under this Consent  
17 Order shall be under the direction and supervision of qualified personnel. Within 30 days of the  
18 effective date of this Consent Order, and before the work outlined below begins, the Respondent  
19 shall notify EPA in writing of the names, titles, and qualifications of the personnel, including  
20 contractors, subcontractors, consultants and laboratories to be used in carrying out such work.  
21 For personnel retained after the Effective Date, Respondents shall make such notification within  
22 fourteen (14) days after Respondents' selection of the contractor, subcontractor, consultant or  
23 laboratories. With respect to any proposed contractor, the Respondent shall demonstrate that the  
24 proposed contractor has a quality system which complies with ANSI/ASQC E4-1994,  
25 "Specifications and Guidelines for Quality Systems for Environmental Data Collection and  
26 Environmental Technology Programs," (American National Standard, January 5, 1995), by  
27 submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP  
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4 should be prepared in accordance with "EPA Requirements for Quality Management Plans  
5 (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by  
6 EPA.

7 26. Activities and Deliverables. Respondent shall conduct activities and submit  
8 deliverables as provided by the attached Focused RI/FS Statement of Work ("SOW"), which is  
9 incorporated by reference, and is binding upon Respondent. All such work shall be conducted in  
10 accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the  
11 "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under  
12 CERCLA" (OSWER Directive # 9355.3-01), "Guidance for data Usability in Risk Assessment"  
13 (OSWER Directive #9285.7-05) and guidance referenced therein, as well as guidance referenced  
14 in the Statement of Work, as may be amended or modified by EPA. All work performed under  
15 the Consent Order shall be in accordance with the schedules in the SOW, and in full accordance  
16 with the standards, specifications, and other requirements of the Focused RI/FS Work Plan,  
17 Health and Safety Plan, and Sampling and Analysis Plan, as initially approved or modified by  
18 EPA, and as may be amended or modified by EPA from time to time.

19 27. The first deliverable under the SOW is a Research Report (SOW Section 3.1.3). As  
20 part of the Research Report, Respondent will evaluate the adequacy of existing Site-related data  
21 and the need for additional field investigations to evaluate potential source areas. The results of  
22 this evaluation will be used by EPA to determine the need to continue the Focused RI/FS  
23 process. If EPA determines that the Site requires no additional field investigation, EPA will  
24 provide Respondent with a notice of completion of Work pursuant to Section XXXIII (Notice of  
25 Completion of Work).

26 28. Focused Risk Assessment. Unless the RI/FS process is completed under Paragraph  
27 27 herein, Respondent will perform the Focused Risk Assessment in accordance with the SOW,  
28 Focused RI/FS WorkPlan and applicable EPA guidance. The major components of the Risk

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4 Assessment include contaminant identification, exposure assessment, toxicity assessment, and  
5 human health and ecological risk characterization. The results of the Focused Risk Assessment  
6 will be set forth in the Focused Remedial Investigation Report in accordance with the SOW.

7 29. Unless the RI/FS process is completed under Paragraph 27 herein, Respondent will  
8 prepare a Focused Remedial Investigation Report that will review and summarize the activities  
9 required under the SOW and assess the risks to human health and the environment at the Site for  
10 contamination that originated from the Site. The Focused Remedial Investigation Report will  
11 also include all other applicable requirements contained in the SOW.

12 30. If EPA determines that the results of the Focused Remedial Investigation Report  
13 identify unacceptable risks to human health and/or the environment and hazardous substances,  
14 pollutants or contaminants originating from the Site have contributed to those risks, the  
15 Respondent will conduct an evaluation of the remedial alternatives that will address those risks  
16 and complete a Focused Feasibility Study for EPA to use in determining the remedy for the Site.  
17 If EPA determines that the results of the Focused Remedial Investigation Report do not identify  
18 unacceptable risks to human health and/or the environment or if hazardous substances, pollutants  
19 or contaminants originating from the Site have not contributed to those risks, EPA will provide  
20 Respondent with a notice of completion of Work pursuant to Section XXXIII (Notice of  
21 Completion of Work).

22 31. Respondent shall prepare a draft and final version of a Focused Feasibility Report  
23 unless Respondent's obligations under this Consent Decree have been satisfied and Respondent  
24 is due to receive a notice of completion of Work pursuant to Section XXXIII (Notice of  
25 Completion of Work).

26 32. Upon receipt of the draft Focused Feasibility Study Report, EPA will evaluate, as  
27 necessary, the estimates of the risk to the public and environment that are expected to remain  
28 after a particular remedial alternative has been completed. Respondent shall incorporate EPA's

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4 evaluation and analysis into the final Focused Feasibility Study Report that is submitted to EPA  
5 for review and approval.

6 33. EPA reserves the right to stop Respondent from proceeding further, either  
7 temporarily or permanently, on any tasks, activity or deliverable required by this Consent Order.

8 34. Off-Site Shipment of Waste Material. Respondent shall, fourteen days prior to any  
9 off-site shipment of hazardous substances from the Site to an out-of-state waste management  
10 facility, provide written notification to the appropriate state environmental official in the  
11 receiving state and to EPA's Project Coordinator of such shipment of hazardous substances.  
12 However, the notification of shipments shall not apply to any such off-site shipments when the  
13 total volume of such shipments will not exceed 10 cubic yards. The notification shall be in  
14 writing, and shall include the following information, where available: (1) the name and location  
15 of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of  
16 the hazardous substances to be shipped; (3) the expected schedule for the shipment of the  
17 hazardous substances; and (4) the method of transportation. Respondent shall notify the  
18 receiving state of major changes in the shipment plan, such as decision to ship the hazardous  
19 substances to another facility within the same state, or to a facility in another state. Prior to  
20 shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site  
21 location, Respondent shall obtain EPA's certification that the proposed receiving facility is  
22 operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C.  
23 §9621(d)(3), and 40 C.F.R. §300.440. EPA shall respond as promptly as practicable to any  
24 request for said certification made by Respondent. Respondent shall only send hazardous  
25 substances, pollutants or contaminants from the Site to an off-site facility that complies with the  
26 requirements of the statutory provision and regulation cited in CERCLA and the NCP.

27 35. Emergency Response and Notification of Releases. In the event of conditions  
28 posing an immediate threat to human health or welfare or the environment, Respondent shall



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4 immediately take all appropriate action. Respondent shall take these actions in accordance with  
5 all applicable provisions of this Consent Order, including, but not limited to, the Health and  
6 Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or  
7 threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator  
8 or, in the event of his/her unavailability, the Regional Duty Officer at (415) 947-4400, of the  
9 incident or Site conditions. In the event that Respondent fails to take appropriate response action  
10 and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response  
11 action not inconsistent with the NCP in the manner described in Section XXI (Payment of  
12 Response Costs).

13 36. In addition, in the event of any release of a hazardous substance from the Site,  
14 Respondent shall immediately notify the EPA Project Coordinator or Regional Duty Officer at  
15 (415) 947-4400, and the National Response Center at (800) 424-8802. Respondent shall submit  
16 a written report to EPA within 7 days after each release, setting forth the events that occurred and  
17 the measures taken or to be taken to mitigate any release or endangerment caused or threatened  
18 by the release and to prevent the reoccurrence of such a release. This reporting requirement is in  
19 addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. §9603(c),  
20 and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42  
21 U.S.C. §11004, *et seq.*

#### 22 **X. MODIFICATION OF THE FOCUSED RI/FS WORK PLAN**

23 37. If at any time during the Focused RI/FS process, Respondent identifies a need for  
24 additional data, Respondent shall submit a Technical Memorandum documenting the need for  
25 additional data to the EPA Project Coordinator within thirty (30) days of identification. EPA  
26 shall notify Respondent in writing as promptly as practicable whether the additional data can be  
27 collected by Respondent. Respondent shall incorporate any such additional data collected into  
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4 reports and deliverables unless the Parties mutually agree otherwise.

5 38. EPA may determine that in addition to tasks defined in the initially approved  
6 Focused RI/FS Work Plan, other additional work may be necessary to accomplish the objectives  
7 of the Focused RI/FS as set forth in the Statement of Work for this Focused RI/FS, provided that  
8 said additional work is not inconsistent with the NCP. EPA may require that the Respondent  
9 perform these response actions in addition to those required by the initially approved Focused  
10 RI/FS Work Plan, including any approved modifications, if it determines that such actions are  
11 necessary for a complete Focused RI/FS. Respondent shall confirm its willingness to perform the  
12 additional work in writing to the EPA within 7 days of receipt of the EPA request or Respondent  
13 shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent shall  
14 implement the additional tasks that EPA determines are necessary. Respondent shall complete  
15 the additional work according to the standards, specifications, and schedule set forth or approved  
16 by EPA in a written modification to the Focused RI/FS Work Plan or written work plan  
17 supplement. EPA reserves the right to conduct the work itself at any point, to seek  
18 reimbursement from Respondent, and or to seek any other appropriate relief. Nothing in this  
19 Paragraph shall be construed to limit EPA's authority to require performance of further response  
20 actions at the Site.

21 39. In the event of unanticipated or changed circumstances at the Site, Respondent  
22 shall notify the EPA Project Coordinator by telephone within 48 hours of discovery of the  
23 unanticipated or changed circumstances. Respondent will be permitted to prepare changes to the  
24 work plan in accordance with Section XI (EPA Approval Of Plans And Other Submissions). In  
25 addition to the authorities in the NCP, in the event that EPA determines that the immediate threat  
26 or the unanticipated or changed circumstances warrant changes in the work plan, EPA shall  
27 modify or amend the work plan in writing accordingly if Respondent refuses or is unable to  
28 adequately amend the work plan in a reasonable time frame. Respondent shall perform the work

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4 plan as modified or amended.

#### 5 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

6 40. After review of any plan, report or other item that is required to be submitted for  
7 approval pursuant to this Consent Order, EPA shall: (a) approve, in whole or in part, the  
8 submission; (b) approve the submission upon specified conditions; (c) modify the submission to  
9 cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that  
10 Respondent modify the submission; or (e) any combination of the above. However, EPA shall  
11 not modify a submission without first providing Respondent at least one notice of deficiency and  
12 an opportunity to cure within 21 days, except where to do so would cause serious disruption to  
13 the Work or where previous submission(s) have been disapproved due to material defects and the  
14 deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an  
15 acceptable deliverable. EPA and Respondents may mutually agree that a longer cure time is  
16 necessary for additional field data collection or activities that require a long lead time.

17 41. In the event of approval, approval upon conditions, or modification by EPA,  
18 Respondent shall proceed to take any action required by the plan, report or other item, as  
19 approved or modified by EPA subject only to its right to invoke the Dispute Resolution  
20 procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or  
21 conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies  
22 and the submission has a material defect, EPA retains the right to seek stipulated penalties, as  
23 provided in Section XIX (Stipulated Penalties). In the event that Respondent fails to cure  
24 effectively any required submission hereunder, EPA also retains the right to perform its own  
25 studies, complete the Focused RI/FS (or any portion thereof) under CERCLA and the NCP, and  
26 seek reimbursement from Respondent for its costs; and/or seek any other appropriate relief.

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4 42. Resubmission of Plans.

5 a. Upon receipt of a notice of disapproval, Respondent shall, within 21 days or such  
6 longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan,  
7 report, or other item for approval.

8 b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed, at  
9 the direction of EPA, to take any action required by any non-deficient portion of the submission.  
10 Implementation of any non-deficient portion of a submission shall not relieve Respondent of any  
11 liability for stipulated penalties under Section XIX (Stipulated Penalties).

12 c. In the event that a resubmitted plan, report or other item, or portion thereof, is  
13 disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in  
14 accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the  
15 plan, report or other item. Respondent shall implement any such plan, report, or item as  
16 modified or developed by EPA, subject only to its right to invoke the procedures set forth in  
17 Section XVIII (Dispute Resolution).

18 d. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to  
19 a material defect, Respondent shall be deemed to have failed to submit such plan, report, or item  
20 timely and adequately unless Respondent invokes the dispute resolution procedures set forth in  
21 Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The  
22 provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall  
23 govern the implementation of the Work and accrual and payment of any stipulated penalties  
24 during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties  
25 shall accrue for such violation from the date on which the initial submission was originally  
26 required, as provided in Section XIX (Stipulated Penalties).

27 43. In the event that EPA takes over some of the tasks, but not the preparation of the  
28 Focused RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the

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4 final Focused Remedial Investigation and Focused Feasibility Study Reports.

5 44. All plans, reports, and other items required to be submitted to EPA under this  
6 Consent Order shall, upon approval or modification by EPA, be enforceable under this Consent  
7 Order. In the event EPA approves or modifies a portion of a plan, report, or other item required  
8 to be submitted to EPA under this Consent Order, the approved or modified portion shall be  
9 enforceable under this Consent Order.

## 10 XII. QUALITY ASSURANCE

11 45. Respondent shall assure that Work performed, samples taken and analyses  
12 conducted conform to the requirements of the SOW, the QAPP and guidances identified therein.  
13 Respondent will assure that field personnel used by Respondent are properly trained in the use of  
14 field equipment and in chain of custody procedures. Respondent shall only use laboratories that  
15 have a documented quality system that complies with "EPA Requirements for Quality  
16 Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as  
17 determined by EPA.

## 18 XIII. PROGRESS REPORTS AND MEETINGS

19 46. Respondent shall make presentations at, and participate in, meetings at the request  
20 of EPA during the initiation, conduct, and completion of the Focused RI/FS. Any meeting at  
21 which Respondent is required to appear through the personal appearance of a representative shall  
22 be conducted at a location within a twenty-five (25) mile radius of the Site, except as may be  
23 mutually agreed by the Parties.

24 47. Respondent shall provide to EPA monthly progress reports on the last Friday of the  
25 week following each month. After Respondent provides Notification of Initiation of Fieldwork  
26 as required by SOW Section 4.1, and continuing until Respondent provides Notification of  
27  
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4 Completion of Fieldwork as required by SOW Section 4.1, Respondent shall provide to EPA  
5 weekly progress reports on Friday of each week as well as monthly progress reports. At a  
6 minimum, with respect to the preceding reporting period, these progress reports shall (1) describe  
7 the actions which have been taken to comply with this Consent Order during that reporting  
8 period (2) include all results of sampling and tests and all other data received by the Respondent,  
9 (3) describe work planned for the next two weeks or two months with schedules relating such  
10 work to the overall project schedule for Focused RI/FS completion and (4) describe all problems  
11 encountered and any anticipated problems, any actual or anticipated delays, and solutions  
12 developed and implemented to address any actual or anticipated problems or delays. Respondent  
13 may submit monthly and weekly progress reports electronically and may combine the monthly  
14 report with the last weekly submitted during a month. Respondents shall submit weekly and  
15 monthly progress reports in hard copy upon request by EPA's Project Coordinator. Respondents  
16 shall notify EPA's Project Coordinator within one day of all changes to any schedule included in  
17 a weekly report. While conducting fieldwork, Respondents shall use best efforts to provide daily  
18 updates to EPA's Project Coordinator. These updates may be submitted electronically. Daily  
19 updates are not subject to stipulated penalties as described in Section XIX (Stipulated Penalties).

#### 20 **XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

21 48. All results of sampling, tests, modeling or other data generated by the Respondent,  
22 or on Respondent's behalf, during implementation of this Consent Order, shall be submitted to  
23 EPA in the subsequent progress report as described in Section XIII of this Consent Order  
24 (Progress Reports and Meetings). To comply with the requirements of this Paragraph,  
25 Respondents shall submit the final laboratory reports and final data validation reports for all  
26 sampling data.

27 49. Respondent will notify EPA in writing at least 14 days prior to conducting  
28

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4 significant field events as described in the Statement of Work, Focused Remedial Investigation  
5 Work Plan or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of  
6 EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA  
7 (and its authorized representatives) of any samples collected by the Respondent in implementing  
8 this Consent Order. All split samples of Respondent shall be analyzed by the methods identified  
9 in the QAPP.

10 50. Respondents shall arrange for or use best efforts to provide EPA and its authorized  
11 representatives with the authority to enter and freely move about, at all reasonable times, all  
12 property at the Site and off-site areas where work, if any, is being performed, for the purposes of  
13 inspecting conditions, activities, the results of activities, records, operating logs, and contracts  
14 related to the Site or Respondent and its contractor pursuant to this Consent Order; reviewing the  
15 progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as  
16 EPA or its authorized representatives deem necessary; using a camera, sound recording device or  
17 other documentary type equipment; and verifying the data submitted to EPA by the Respondent.  
18 The Respondent shall allow these persons to inspect and copy all records, files, photographs,  
19 documents, sampling and monitoring data, and other writings related to work undertaken in  
20 carrying out this Consent Order in its possession or control. Nothing herein shall be interpreted  
21 as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties  
22 with access to the Site under this Paragraph shall comply with all Occupational Safety and Health  
23 Act (29 CFR 1910.120) requirements, including training and health and safety protection and at  
24 all times be in possession of identification and authorization establishing their right of access.

25 51. The Respondent may assert a claim of business confidentiality covering part or all  
26 of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R.  
27 Section 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42  
28 U.S.C. Section 9604 (e)(7). This claim shall be asserted in the manner described by 40 C.F.R.

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4 Section 2.203(b) and substantiated at the time the claim is made. Information determined to be  
5 confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such  
6 claim accompanies the information when it is submitted to EPA, it may be made available to the  
7 public by EPA or the state without further notice to the Respondent. Respondent agrees not to  
8 assert confidentiality claims with respect to any documents, reports or other information created  
9 or generated pursuant to the requirements of this Consent Order or to make any claim of  
10 confidentiality with respect to any data, including, but not limited to, all sampling, analytical,  
11 monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or  
information evidencing conditions at or around the Site.

12 52. In entering into this Consent Order, Respondent waives any objections to any Site-  
13 related data gathered, generated, or evaluated by EPA, the Arizona Department of Environmental  
14 Quality or Respondent in the performance or oversight of the work that has been verified  
15 according to the quality assurance/quality control (QA/QC) procedures required by the Consent  
16 Order or any EPA-approved work plans or sampling and analysis plans related to the Site. If  
17 Respondent objects to any other data relating to the Focused RI/FS, Respondent shall submit to  
18 EPA a report that identifies and explains its objections, describes the acceptable uses of the data,  
19 if any, and identifies any limitations to the use of the data. The report must be submitted to EPA  
20 within sixty (60) days of the report containing the data. If the scope of this report is large, the  
21 parties may extend this deadline in accordance with Section XXXI (Subsequent Modification).

22 53. If the Site, or the off-site area that is to be used for access or is within the scope of  
23 the Focused RI/FS, is owned in whole or in part by parties other than those bound by this  
24 Consent Order, Respondent will obtain, or use its best efforts to obtain, Site access agreements  
25 from the present owner(s) within sixty (60) days of the effective date of this Consent Order, or in  
26 the case of access to off-Site areas, within sixty (60) days from the determination that access to  
27 an off-Site area is needed. Such agreements shall provide access for EPA, its contractors and  
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4 oversight officials, the state and its contractors, and the Respondent or its authorized  
5 representatives, and such agreements shall specify that Respondent is not EPA's representative  
6 with respect to liability associated with Site activities. Copies of such agreements shall be  
7 provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts  
8 shall include providing reasonable compensation to any off-site property owner. The  
9 determination, if necessary, as to whether Respondent made an offer of reasonable compensation  
10 shall be the subject of the dispute resolution process set forth in Section XVIII, herein. If access  
11 agreements are not obtained within the time referenced above, Respondent shall immediately  
12 notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, or  
13 terminate the Consent Order in the event that Respondent cannot obtain access agreements. EPA  
14 also retains its authority under law to perform those tasks or activities not inconsistent with the  
15 NCP, terminate the Consent Order or the relevant portion thereof, and seek reimbursement from  
16 Respondent for EPA's costs. Respondent shall reimburse EPA for all costs and attorney fees  
17 incurred by the United States to obtain access for the Respondent in the manner described in  
18 Section XXI (Payment of Response Costs).

#### 19 **XV. DESIGNATED PROJECT COORDINATORS**

20 54. Documents including reports, approvals, and disapprovals, that must be submitted  
21 under this Consent Order, shall be sent as described in this Section, to the following addressees  
22 or to any other addressees which the Respondent  
23 and EPA designate in writing:

24 (a) Respondent will send copies of all documents to be submitted to EPA to EPA's  
25 Project Coordinator as identified below:

26 2 hard copies and 1 electronic copy to:

27 Nadia Hollan  
28 Remedial Project Manager

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4 Superfund Division (SFD-8-2)  
5 US EPA, Region IX  
6 75 Hawthorne Street  
7 San Francisco, CA 94105  
8 hollan.nadia@epa.gov

9 Respondent will also send copies of all documents submitted to EPA to:

10 1 hard copy or 3 electronic copies of documents if  
11 submitted in compact disk format

12 Kris Paschall  
13 Arizona Department of Environmental Quality  
14 1110 W. Washington St.  
15 Phoenix, AZ 85007-2935  
16 paschall.kris@azdeq.gov

17 1 electronic copy

18 Wayne Schiemann  
19 US Army Corps of Engineers  
20 AZ/NV Area Office  
21 3636 N. Central Ave. Suite 900  
22 Phoenix, AZ 85012-1936  
23 wschiemann@spl.usace.army.mil

24 2 hard copies, 1 electronic copy

25 Sue Kraemer  
26 Shaw E&I  
27 1326 N. Market Street  
28 Sacramento, CA 95834-1912  
sue.kraemer@shawgrp.com

(b) Documents to be submitted to the Respondent should be sent to Respondent's  
Project Coordinator as follows:

2 hard copies and 1 electronic copy to:

Jon Preston Held, Sr. Vice President and CFO  
Project Coordinator  
Phoenix Newspapers, Inc.  
200 East Van Buren Street  
Phoenix, Arizona 85004  
JHeld@ad.gannett.com

EPA will also send 1 hard copy and 1 electronic copy of all documents submitted to  
Respondent to:

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4 Shelley Lucas  
5 Attorney-At-Law  
6 7950 Jones Branch Drive - 10<sup>th</sup> Floor  
7 McLean, VA 22107  
8 svlucas@gannett.com

9 Robert McEwan  
10 Nixon Peabody LLP  
11 Omni Plaza  
12 30 South Pearl Street  
13 Albany, NY 12207  
14 rmcewan@nixonpeabody.com

15 Katherine Roxlo, R.G.  
16 TRC  
17 14301 North 87<sup>th</sup> Street, Suite 114  
18 Scottsdale, Arizona 85260  
19 (602) 882-9044  
20 kroxlo@trcsolutions.com

21 Other correspondence and documents may be sent via e-mail.

22 55. Each Project Coordinator shall be responsible for overseeing the implementation of  
23 this Consent Order. To the maximum extent possible, routine communications between the  
24 Respondent and EPA shall be directed to the Project Coordinator by e-mail, with copies to such  
25 other persons as EPA and Respondent may respectively designate.

26 56. EPA and the Respondent each have the right to change their respective Project  
27 Coordinator. EPA and Respondent also have the right to change the number of copies of  
28 documents required pursuant to this Consent Order. The other party must be notified in writing  
at least 10 days prior to the change.

57. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial  
Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's  
Project Coordinator shall have the authority consistent with the National Contingency Plan, to  
halt any work required by this Consent Order, and to take any necessary response action when  
s/he determines that conditions at the Site may present an immediate endangerment to public  
health or welfare or the environment. The absence of the EPA Project Coordinator from the area

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4 under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

## 5 **XVI. COMPLIANCE WITH OTHER LAWS**

6 58. Respondent shall comply with all local, state and federal laws that are applicable  
7 when performing the Focused RI/FS. No local, state, or federal permit shall be required for any  
8 portion of any action conducted entirely on-Site, including studies, where such action is selected  
9 and carried out in compliance with Section 121 of CERCLA and the applicable portions of the  
10 National Contingency Plan ("NCP"). Where any portion of the Work is to be conducted off-Site  
11 and requires a federal or state permit or approval, Respondents shall submit timely and complete  
12 applications and take all other actions necessary to obtain and to comply with all such permits or  
13 approvals. This Consent Order is not, and shall not be construed to be, a permit issued pursuant  
14 to any federal or state statute or regulation.

## 15 **XVII. RETENTION OF RECORDS**

16 59. All records and documents in Respondent's possession that relate in any way to the  
17 Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years  
18 after commencement of construction of any remedial action. The Respondent shall acquire and  
19 retain copies of all documents that relate to the Site and are in the possession of its employees,  
20 agents, accountants, contractors, or attorneys. After this 10 year period, the Respondent shall  
21 notify EPA of the scheduled destruction of the referenced documents at least ninety (90) days  
22 before the documents are to be destroyed. If EPA requests that the documents be saved, the  
23 Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents, except  
24 privileged documents, for which a privilege log will be prepared and those that have been  
25 submitted to EPA previously under this Consent Order or in the letter dated September 18, 2000,  
26 which was submitted in response to EPA's request for information under Section 104(e) of  
27  
28

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4 CERCLA.

5 60. Respondent hereby certifies that to the best of its knowledge and belief, after  
6 thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any  
7 records, documents or other information (other than exactly identical copies) relating to its  
8 potential liability regarding the Site or the Motorola 52<sup>nd</sup> Street Site since notification of potential  
9 liability by EPA and it has fully complied with any and all EPA requests for information  
10 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and  
11 Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 12 XVIII. DISPUTE RESOLUTION

13 61. Unless otherwise expressly provided for in this Consent Order, the dispute resolution  
14 procedures of this Section shall be the exclusive mechanism for resolving disputes arising under  
15 this Consent Order. The Parties shall attempt to resolve any disagreements concerning this  
16 Consent Order expeditiously and informally.

17 62. If Respondent objects to any EPA action taken pursuant to this Consent Order,  
18 including billings for Future Response Costs, it shall notify EPA in writing of its objection(s)  
19 within thirty (30) days of such action, unless the objection(s) has/have been resolved informally.  
20 EPA and Respondent shall have ninety (90) days from EPA's receipt of Respondent's written  
21 objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The  
22 Negotiation Period may be extended upon the mutual consent of the Parties.

23 63. Any agreement reached by the Parties pursuant to this Section shall be in writing and  
24 shall, upon signature by the Parties, be incorporated into and become an enforceable part of this  
25 Consent Order. If the Parties are unable to reach an agreement within the Negotiation Period, an  
26 EPA management official at the Branch Chief level or higher will issue a written decision on the  
27 dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable  
28

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4 part of this Consent Order. Respondent's obligations under this Consent Order shall not be  
5 tolled by submission of any objection for dispute resolution under this Section. Following  
6 resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement  
7 that was the subject of the dispute in accordance with the agreement reached or with EPA's  
8 decision, whichever occurs.

9 **XIX. STIPULATED PENALTIES**

10 64. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in  
11 this Section for failure to comply with the requirements of this Consent Order specified below  
12 unless excused under Section XX (Force Majeure). "Compliance" by Respondent shall include  
13 completion of the activities under this Consent Order, Focused RI/FS Work Plan or other plan  
14 approved under this Consent Order identified below in accordance with all applicable  
15 requirements of law, this Consent Order, the SOW, and any plans or other documents approved  
16 by EPA pursuant to this Consent Order and within the specified time schedules established by  
17 and approved under this Consent Order.

18 65. Stipulated Penalty Amounts - Major Deliverables

19 a. The following stipulated penalties shall accrue per day for any noncompliance  
20 identified in Subparagraph 65(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 5,000	1 <sup>st</sup> through 7 <sup>th</sup> day
\$ 12,000	8 <sup>th</sup> through 30 <sup>th</sup> day

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4 \$ 27,500 31<sup>st</sup> day and beyond

5 b. Compliance Milestones

- 6 1. Research Report  
7 2. Remedial Action Objectives Technical Memorandum  
8 3. Draft and Final Focused RI/FS Work Plan  
9 4. Compliance with the Schedule contained in the Final Focused RI/FS Work  
10 Plan  
11 5. Technical Memorandums to supplement Focused RI/FS Work Plan  
12 6. Draft and Final Sampling and Analysis Plan  
13 7. Draft and Final Site Health and Safety Plan  
14 8. Notification of Initiation of Field Work  
15 9. Notification of Completion of Field Work  
16 10. Draft and Final Focused Remedial Investigation Report  
17 11. Draft and Final Focused Feasibility Study Report

18 66. Stipulated Penalty Amounts - Other Reporting.

19 a. The following stipulated penalties shall accrue per day for any noncompliance  
20 identified in Subparagraph 66(b):

21 Penalty Per Violation Per Day Period of Noncompliance

22  
23 \$ 700.00 1<sup>st</sup> through 7<sup>th</sup> day

24  
25 \$ 1,500 8<sup>th</sup> through 30<sup>th</sup> day

26  
27 \$ 3,000 31<sup>st</sup> day and beyond  
28

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4 b. Compliance Milestones

5 The compliance milestones for this subsection are as follows:

- 6 1. Monthly Progress Reports
- 7 2. Weekly Progress Reports

8 67. For any failure to perform any other work required by this Consent Order, stipulated  
9 penalties shall accrue in the amount of \$2,000 per day, per violation, for the first seven days of  
10 noncompliance, \$4,000 per day, per violation, for days 8 through 30 of noncompliance, and in  
11 the amount of \$10,000 per day, per violation, thereafter. In the event that EPA assumes  
12 performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXIII  
13 (Reservation of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount  
14 of five hundred thousand dollars (\$500,000), unless Respondent was unable to gain access to the  
15 Site or other off-Site property, pursuant to Section XIV (Sampling, Access, And Data  
16 Availability/Admissibility), to perform the work under this Consent Order.

17 68. All penalties shall begin to accrue on the day after the complete performance is due  
18 or the day a violation occurs, and shall continue to accrue through the final day of the correction  
19 of the noncompliance or completion of the activity. However, stipulated penalties shall not  
20 accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and  
21 Other Submissions), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of  
22 such submission until the date that EPA notifies Respondent of any deficiency; and (2) with  
23 respect to a decision by the EPA Management Official at the Branch Chief level or higher, under  
24 Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the  
25 Negotiation Period begins until the date that the EPA management official issues a final decision  
26 regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate  
27 penalties for separate violations of this Consent Order.

28 69. Following EPA's determination that Respondent has failed to comply with a



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4 requirement of this Consent Order, EPA may give Respondent written notification of the same  
5 and describe the noncompliance. In determining whether Respondent has failed to comply with a  
6 requirement of this Consent Order, EPA shall consider any period of non-performance by  
7 Respondents that is (1) caused by waiting for EPA's necessary approval; or (2) due to a stoppage  
8 of work by EPA under Paragraph 33, herein. EPA may send Respondent a written demand for  
9 the payment of the penalties and no penalties are due unless EPA makes a written demand  
10 therefore. However, penalties shall accrue as provided in the preceding Paragraph regardless of  
11 whether EPA has notified Respondent of a violation. Written demand shall be made upon those  
12 persons identified at Paragraph 54(b) herein.

13 70. All penalties accruing under this Section shall be due and payable to EPA within 60  
14 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless  
15 Respondent invokes the dispute resolution procedures under Section XVIII (Dispute Resolution).  
16 All payments to EPA under this Section shall be paid by certified or cashier's check(s) made  
17 payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA - Cincinnati  
18 Accounting Operations, Attention: Region 9 Receivables, P.O. Box 371099M, Pittsburgh, PA  
19 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA  
20 Region and Site/Spill ID Number 09BE, the EPA Docket Number, and the name and address of  
21 the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any  
22 accompanying transmittal letter(s) shall be sent to EPA's Project Coordinator.

23 71. The payment of penalties shall not alter in any way Respondent's obligation to  
24 complete performance of the Work required under this Consent Order.

25 72. Penalties shall continue to accrue during any dispute resolution period for any  
26 continuing violation, but need not be paid in the event that Respondent prevails or until 60 days  
27 after the dispute is resolved by agreement or by receipt of EPA's decision.

28 73. If Respondent fails to pay stipulated penalties when due, EPA may institute

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4 proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the  
5 unpaid balance, which shall begin to accrue on the date of EPA's demand.

6 74. Nothing in this Consent Order shall be construed as prohibiting, altering, or in any  
7 way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of  
8 Respondent's violation of this Consent Order or of the statutes and regulations upon which it is  
9 based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, 42 U.S.C.  
10 § 9722(I), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §  
11 9607(c)(3). Notwithstanding any other provision of this Section, EPA may, in its unreviewable  
12 discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent  
13 Order.

#### 14 XX. FORCE MAJEURE

15 75. Respondent agrees to perform all requirements of this Consent Order within the  
16 time limits established under this Order, unless the performance is delayed by a *force majeure*.  
17 For purposes of this Consent Order, *force majeure* is defined as any event arising from causes  
18 beyond the control of Respondent or of any entity controlled by Respondent, including but not  
19 limited to its contractors and subcontractors, which delays or prevents performance of any  
20 obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation.  
21 *Force majeure* does not include financial inability to complete the Work or increased cost of  
22 performance.

23 76. If any event occurs or has occurred that may delay the performance of any  
24 obligation under this Consent Order, whether or not caused by a *force majeure* event,  
25 Respondent shall notify by telephone the Project Coordinator or, in his or her absence, EPA's  
26 Chief of the Superfund, Private Sites and DOE Section ("Section Chief"), within 48 hours of  
27 when the Respondent knew or should have known that the event might cause a delay. Within  
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4 five business days thereafter, Respondent shall provide in writing the reasons for the delay; the  
5 anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the  
6 delay; a schedule for implementation of any measures to be taken to mitigate the effect of the  
7 delay; and a statement as to whether, in the opinion of Respondent, such event may cause or  
8 contribute to an endangerment to public health, welfare or the environment. Respondent shall  
9 exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply  
10 with the above requirements shall preclude Respondent from asserting any claim of force  
11 majeure.

12 77. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*  
13 event, the time for performance of the obligations under this Consent Order that are affected by  
14 the force majeure event will be extended by EPA for such time as is necessary to complete those  
15 obligations. An extension of the time for performance of the obligations affected by the *force*  
16 *majeure* event shall not, of itself, extend the time for performance of any other obligation. If  
17 EPA does not agree that the delay or anticipated delay has been or will be caused by a *force*  
18 *majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the  
19 delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the  
20 length of the extension, if any, for performance of the obligations affected by the *force majeure*  
21 event.

## 22 **XXI. PAYMENT OF RESPONSE COSTS**

### 23 **78. Payment for Past Response Costs**

24 a. Within 30 days after the Effective Date, Respondent shall pay to EPA  
25 \$ 1,814.37 for Past Response Costs. Payment shall be made to EPA by certified or cashiers  
26 check made payable to "EPA Hazardous Substance Superfund." Each check, or letter  
27 accompanying each check, shall identify the name and address of the party making payment, the  
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4 Site name as well as the name of the Motorola 52<sup>nd</sup> Street Site, the EPA Region (Region 9) and  
5 Site/Spill ID Number 09BE, and the EPA docket number for this action. Payment shall be sent  
6 to:

7 EPA - Cincinnati Accounting Operations  
8 Attention: Region 9 Superfund Receivables  
9 P.O. Box 371099M  
10 Pittsburgh, PA 15251

11 b. At the time of payment, Respondent shall send notice that payment has been  
12 made to the EPA Project Coordinator.

13 c. The total amount to be paid by Respondent pursuant to Subparagraph 78a shall  
14 be deposited in the Motorola 52<sup>nd</sup> Street Superfund Site Special Account within the EPA  
15 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
16 or in connection with the Motorola 52<sup>nd</sup> Street Site, or to be transferred by EPA to the EPA  
17 Hazardous Substance Superfund.

18 79. Payment for Future Response Costs

19 a. Respondent shall pay EPA all Future Response Costs not inconsistent with the  
20 NCP that relate to the Site. On a periodic basis, EPA will send Respondent a bill requiring  
21 payment, including, but not limited to EPA's certified Agency Financial Management System  
22 summary data (SCORES Reports), or such other summary as certified by EPA. Upon  
23 Respondent's request, EPA will provide, consistent with the requirements of 40 C.F.R. Part 2  
24 concerning claims of business confidentiality, other information regularly maintained by EPA  
25 showing Site costs. Such request must be made by Respondent in a timely manner to allow for  
26 payment of Past Response Costs as provided by this Section. Respondent shall make all  
27 payments within 30 days of receipt of each bill requiring payment, except as otherwise provided  
28 in Paragraph 81 of this Consent Order. Respondent may request additional time to review  
supporting documentation. Upon written request by Respondent for additional time, EPA may

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4 grant an additional 30 days to make payments required under this Paragraph. Respondent shall  
5 make all payments required by this Paragraph by a certified or cashier's check or checks made  
6 payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party  
7 making payment, the Site name and the name of the Motorola 52<sup>nd</sup> Street Superfund Site, the  
8 EPA Region (Region 9), Site/Spill ID Number 09BE, and the EPA docket number for this action.  
9 Respondent shall send the check(s) to:

10 EPA - Cincinnati Accounting Operations  
11 Attention: Region 9 Receivables  
12 P.O. Box 371099M  
13 Pittsburgh, PA 15251

14 Alternatively, Respondent may make payments required by this Paragraph by Electronic  
15 Funds Transfer ("EFT") in accordance with EFT procedures to be provided to Respondent by  
16 EPA Region 9, and shall be accompanied by a statement identifying the name and address of the  
17 party making payment, the Site name and the name of the Motorola 52<sup>nd</sup> Street Superfund Site,  
18 the EPA Region (Region 9), Site/Spill ID Number 09BE, and the EPA docket number for this  
19 action.

20 b. At the time of payment, Respondent shall send notice that payment has been  
21 made to the EPA Project Coordinator.

22 c. The total amount to be paid by Respondent pursuant to Subparagraph 79a shall  
23 be deposited in the Motorola 52<sup>nd</sup> Street Superfund Site Special Account within the EPA  
24 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
25 or in connection with the Motorola 52<sup>nd</sup> Street Site, or to be transferred by EPA to the EPA  
26 Hazardous Substance Superfund.

27 80. In the event that the payments for Past Response Costs or Future Response Costs are  
28 not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the  
unpaid balance. The Interest on Past Response Costs and Future Response Costs shall begin to

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4 accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of  
5 Interest made under this Paragraph shall be in addition to such other remedies or sanctions  
6 available to the United States by virtue of Respondent's failure to make timely payments under  
7 this Section, including but not limited to, payments of stipulated penalties pursuant to Section  
8 XIX (Stipulated Penalties). Respondent shall make all payments required by this Paragraph in  
9 the manner described in Paragraph 79.

10 81. Respondent may contest payment of the Past Response Costs or any Future  
11 Response Costs if it determines that EPA has made an accounting error, if it believes EPA  
12 incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP, or if  
13 it believes that EPA has attributed costs to this Site that were incurred at another Site. Such  
14 objection shall be made in writing within 30 days of receipt of the bill and must be sent to the  
15 EPA Project Coordinator. Any such objection shall specifically identify the contested cost(s) and  
16 the basis for objection. In the event of an objection, Respondent shall within the 30 day period  
17 pay all uncontested Past Response Costs or Future Response Costs to EPA in the manner  
18 described in Paragraph 79. Simultaneously, Respondent shall establish an interest-bearing  
19 escrow account in a federally-insured bank duly chartered in the State of Arizona and remit to  
20 that escrow account funds equivalent to the amount of the contested Past Response Costs or  
21 Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the  
22 transmittal letter and check paying the uncontested Past Response Costs or Future Response  
23 Costs, and a copy of the correspondence that establishes and funds the escrow account, including,  
24 but not limited to, *information containing the identity of the bank and bank account under which*  
25 *the escrow account is established as well as a bank statement showing the initial balance of the*  
26 *escrow account. Simultaneously with establishment of the escrow account, Respondent shall*  
27 *initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If EPA*  
28 *prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the*

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4 sums due (with accrued interest) to EPA in the manner described in Paragraph 79. If Respondent  
5 prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the  
6 costs (plus associated accrued interest) for which it did not prevail to EPA in the manner  
7 described in Paragraph 79. Respondent shall be disbursed any balance of the escrow account.  
8 The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures  
9 set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving  
10 disputes regarding Respondent's obligation to reimburse EPA for its Past Response Costs and  
11 Future Response Costs.

## 12 **XXII. EPA COVENANT**

13 82. In consideration of the actions that will be performed and the payments that will be  
14 made by Respondent under the terms of this Consent Order, and except as otherwise specifically  
15 provided in this Consent Order, EPA covenants not to sue or take administrative action against  
16 Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a),  
17 for performance of the Work and for recovery of Past Response Costs and Future Response  
18 Costs. This covenant shall take effect upon receipt by EPA of the Past Response Costs due under  
19 Section XXI (Payment of Response Costs) of this Consent Order and any Interest or Stipulated  
20 Penalties due for failure to pay Past Response Costs as required by Sections XXI (Payment of  
21 Response Costs) and XIX (Stipulated Penalties). This covenant is conditioned upon the  
22 complete and satisfactory performance by Respondent of all obligations under this Consent  
23 Order, including, but not limited to, payment of Future Response Costs pursuant to Section XXI  
24 (Payment of Response Costs). This covenant extends only to Respondent and does not extend to  
25 any other person.  
26  
27  
28

4 **XXIII. RESERVATIONS OF RIGHTS**

5 83. Except as specifically provided in this Consent Order, nothing herein shall limit the  
6 power and authority of EPA or the United States to take, direct, or order all actions necessary to  
7 protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or  
8 threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid  
9 waste on, at , or from the Site or the Motorola 52<sup>nd</sup> Street Site. Further, nothing herein shall  
10 prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order,  
11 from taking other legal or equitable action as it deems appropriate and necessary, or from  
12 requiring Respondent in the future to perform additional activities pursuant to CERCLA or any  
13 other applicable law.

14 84. The covenant not to sue set forth in Section XXII (EPA Covenant) above does not  
15 pertain to any matters other than those expressly identified therein. EPA reserves, and this  
16 Consent Order is without prejudice to, all rights against Respondent with respect to all other  
17 matters, including, but not limited to:

18 a. claims based on a failure by Respondent to meet a requirement of this  
19 Consent Order;

20 b. liability for costs not included within the definition of Past Response  
21 Costs and Future Response Costs;.

22 c. liability for performance of response action other than the Work;

23 d. criminal liability;

24 e. liability for damages for injury to, destruction of, or loss of natural  
25 resources, and for the costs of any natural resource damage assessments;

26 f. liability arising from the past, present, or future disposal, release or  
27 threat of release of Waste Materials outside of the Site; and

28 g. liability for costs incurred or to be incurred by the Agency for Toxic



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4 Substances and Disease Registry related to the Site that are not paid by Respondent as Past  
5 Response Costs or Future Response Costs.

6 85. Work Takeover. In the event EPA determines that Respondent has ceased  
7 implementation of any portion of the Work, is seriously or repeatedly deficient or late in its  
8 performance of the Work, or is implementing the Work in a manner that may cause an  
9 endangerment to human health or the environment, EPA may assume the performance of all or  
10 any portion of the Work as EPA determines necessary. Respondent may invoke the procedures  
11 set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of  
12 the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work  
13 pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay  
14 pursuant to Section XXI (Payment of Response Costs). Notwithstanding any other provision of  
15 this Consent Order, EPA retains all authority and reserves all rights to take any and all response  
16 actions authorized by law.

#### 17 XXIV. RESPONDENT'S COVENANT

18 86. Respondent covenants not to sue and agrees not to assert any claims or causes of  
19 action against the United States, or its contractors or employees, with respect to the Work, Past  
20 Response Costs, Future Response Costs, or this Consent Order, including, but not limited to:

21 a. any direct or indirect claim for reimbursement from the Hazardous Substance  
22 Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113  
23 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

24 b. any claim arising out of the Work arising out of the response actions for which  
25 the Past Response Costs or Future Response Costs have or will be incurred, including any claim  
26 under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to  
27 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or  
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4 c. any claim against the United States pursuant to Sections 107 and 113 of  
5 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

6 87. Respondent reserves claims against the United States, subject to the provisions of  
7 Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of  
8 property or personal injury or death caused by the negligent or wrongful act or omission of any  
9 employee of the United States while acting within the scope of his or her office or employment  
10 under circumstances where the United States, if a private person, would be liable to the claimant  
11 in accordance with the law of the place where the act or omission occurred. However, any such  
12 claim shall not include a claim for any damages caused, in whole or in part, by the act or  
13 omission of any person, including any contractor, who is not a federal employee as that term is  
14 defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection  
15 of response actions, or the oversight or approval of Respondent's plans or activities. The  
16 foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and  
17 for which the waiver of sovereign immunity is found in a statute other than CERCLA.

18 88. Nothing in this Agreement shall be deemed to constitute approval or  
19 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or  
20 40 C.F.R. § 300.700(d).

21 89. Respondent retains its rights to assert claims against other potentially responsible  
22 parties at the Site. However, the Respondent agrees not to contest the validity or terms of this  
23 Consent Order, or the procedures underlying or relating to it in any action brought by the United  
24 States, including EPA, to enforce its terms.

## 25 **XXV. OTHER CLAIMS**

26 90. By issuance of this Consent Order, the United States or EPA assumes no liability for  
27 injuries or damages to persons or property resulting from any acts or omissions of Respondent.  
28 The United States or EPA shall not be deemed a party to any contract entered into by Respondent

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4 or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or  
5 consultants in carrying out actions pursuant to this Consent Order.

6 91. Except as expressly provided in Section XXIII (Reservation of Rights) and Section  
7 XXII (EPA Covenant), nothing in this Consent Order constitutes a satisfaction of or release from  
8 any claim or cause of action against Respondent or any person not a party to this Consent Order,  
9 for any liability such person may have under CERCLA, other statutes, or common law, including  
10 but not limited to any claims of the United States for costs, damages and interest under Sections  
11 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

12 92. No action or decision by EPA pursuant to this Consent Order shall give rise to any  
13 right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### 14 **XXVI. CONTRIBUTION PROTECTION**

15 93. The Parties agree that Respondent is entitled, as of the Effective Date, to protection  
16 from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA,  
17 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The  
18 "matters addressed" in this Consent Order are the Work, Past Response Costs, and Future  
19 Response Costs. Nothing in this Consent Order precludes the United States or Respondent from  
20 asserting any claims, causes of action, or demands against any person not a party to this Consent  
21 Order for indemnification, contribution, or cost recovery.

#### 22 **XXVII. INDEMNIFICATION**

23 94. Respondent shall indemnify, save and hold harmless the United States, its officials,  
24 agents, contractors, subcontractors, employees and representatives from any and all claims or  
25 causes of action arising from, or on account of negligent or other wrongful acts or omissions of  
26 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying  
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4 out actions pursuant to this Consent Order. In addition, Respondent agrees to pay the United  
5 States all costs incurred by the United States, including but not limited to attorneys fees and other  
6 expenses of litigation and settlement, arising from or on account of claims made against the  
7 United States based on negligent or other wrongful acts or omissions of Respondent, its officers,  
8 directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or  
9 under its control, in carrying out activities pursuant to this Consent Order. The United States shall  
10 not be held out as a party to any contract entered into by or on behalf of Respondent in carrying  
11 out activities pursuant to this Consent Order. Neither Respondent nor any such contractor shall be  
12 considered an agent of the United States.

13 95. Respondent waives all claims against the United States for damages or reimbursement  
14 or for set-off of any payments made or to be made to the United States, arising from or on account  
15 of any contract, agreement, or arrangement between Respondent and any person for performance  
16 of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the  
17 United States with respect to any and all claims for damages or reimbursement arising from or on  
18 account of any contract, agreement, or arrangement between Respondent and any person for  
19 performance of Work on or relating to the Site.

## 20 XXVIII. INSURANCE

21 96. At least fifteen (15) days prior to Notification of Fieldwork as required by Section 4.1  
22 of the SOW, Respondent shall secure, and shall maintain for the duration of this Consent Order,  
23 comprehensive general liability insurance and automobile insurance with limits of one million  
24 dollars, combined single limit, naming the United States as an additional insured. Within the  
25 same period, Respondent shall provide EPA with certificates of such insurance and a copy of each  
26 insurance policy. Respondent shall submit such certificates and copies of policies each year on  
27 the anniversary of the Effective Date. In addition, for the duration of the Consent Order,  
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4 Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all  
5 applicable laws and regulations regarding the provision of worker's compensation insurance for  
6 all persons performing the Work on behalf of Respondent in furtherance of this Consent Order. If  
7 Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor  
8 maintains insurance equivalent to that described above, or insurance covering some or all of the  
9 same risks but in an equal or lesser amount, then Respondent need provide only that portion of the  
10 insurance described above which is not maintained by such contractor or subcontractor.

#### 11 **XXIX. FINANCIAL ASSURANCE**

12 97. Prior to Notification of Fieldwork as required by Section 4.1 of the SOW, Respondent  
13 shall establish and maintain financial security for the benefit of EPA in the amount required to  
14 fully and adequately complete the Work in one or more of the following forms:

- 15 a. a surety bond unconditionally guaranteeing payment and/or performance of the  
16 Work;
- 17 b. one or more irrevocable letters of credit, payable to or at the direction of EPA,  
18 issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost  
19 of the Work;
- 20 c. a trust fund administered by a trustee acceptable in all respects to EPA;
- 21 d. a policy of insurance issued by an insurance carrier acceptable in all respects to  
22 EPA, which ensures the payment and/or performance of the Work;
- 23 e. a corporate guarantee to perform the Work provided by one or more parent  
24 corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a  
25 substantial business relationship with Respondent; including a demonstration that any such  
26 company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f);
- 27 f. a corporate guarantee to perform the Work by Respondent, including a  
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4 demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f); and/or  
5 g. a demonstration that one or more of the Respondents possess sufficient net  
6 worth to complete the Work required by this Consent Order, as evidenced by audited financial  
7 statements determined by EPA to show sufficient net worth.

8 98. Any and all financial assurance instruments provided pursuant to this Section shall be  
9 in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that  
10 EPA determines at any time that the financial assurances provided pursuant to this Section  
11 (including, without limitation, the instrument(s) evidencing such assurances) are inadequate,  
12 Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and  
13 present to EPA for approval one of the other forms of financial assurance listed in Paragraph 97,  
14 above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing  
15 the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain  
16 and present to EPA for approval a revised form of financial assurance (otherwise acceptable under  
17 this Section) that reflects such cost increase. Respondent's inability to demonstrate financial  
18 ability to complete the Work shall in no way excuse performance of any activities required under  
19 this Consent Order.

20 99. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to  
21 Subparagraph 97e or 97f of this Consent Order, Respondent shall (i) demonstrate to EPA's  
22 satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii)  
23 resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f)  
24 annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Consent  
25 Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure  
26 costs estimates and the current plugging and abandonment costs estimates," the cost estimate for  
27 the Work as identified in the Focused RI/FS Workplan (section 3.3.1 of the SOW) shall be used in  
28 relevant financial test calculations. If Respondents seek to ensure completion of the Work

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4 through audited financial statements pursuant to Subparagraph 97g of this Consent Order,  
5 Respondents shall submit annually until the Work is completed, a sworn statement by  
6 Respondent(s) Chief Financial Officer(s) in substantially the same form as Appendix C.

7 100. If, after the Effective Date, Respondent can show that the estimated cost to complete  
8 the remaining Work has diminished, Respondent may, on any anniversary date of the Effective  
9 Date, or at any other time agreed to by the Parties, reduce the amount of the financial security  
10 provided under this Section to the estimated cost of the remaining Work to be performed.

11 Respondent shall submit a proposal for such reduction to EPA, in accordance with the  
12 requirements of this Section, and may reduce the amount of the security after receiving written  
13 approval from EPA. In the event of a dispute, Respondent may reduce the amount of security in  
14 accordance with the written decision resolving the dispute.

15 101. Respondent may change the form of financial assurance provided under this Section  
16 at any time, upon notice to and prior written approval by EPA, provided that EPA determines that  
17 the new form of assurance meets the requirements of this Section. In the event of a dispute,  
18 Respondent may change the form of the financial assurance only in accordance with the written  
19 decision resolving the dispute.

### 20 **XXX. SEVERABILITY/INTEGRATION/APPENDICES**

21 102. If a court issues an order that invalidates any provision of this Consent Order or finds  
22 that Respondent has sufficient cause not to comply with one or more provisions of this Consent  
23 Order, Respondent shall remain bound to comply with all provisions of this Consent Order not  
24 invalidated or determined to be subject to a sufficient cause defense by the court's order.

25 103. This Consent Order and its appendices constitute the final, complete and exclusive  
26 agreement and understanding among the Parties with respect to the settlement embodied in this  
27 Consent Order. The parties acknowledge that there are no representations, agreements or  
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4 understandings relating to the settlement other than those expressly contained in this Consent  
5 Order. The following Appendices are attached to and incorporated into this Consent Order:

6 "Appendix A" is the SOW.

7 "Appendix B" is the map of the Motorola 52<sup>nd</sup> Street Site.

8 "Appendix C" is the CFO Statement Form.

### 9 XXXI. SUBSEQUENT MODIFICATION

10 104. The EPA Project Coordinator may make modifications to any plan or schedule or  
11 Statement of Work in writing or by oral direction upon consent of the Respondent. Any oral  
12 modification will be memorialized in writing by EPA promptly, but shall have as its effective date  
13 the date of the Parties' agreement. Any other requirements of this Consent Order may be  
14 modified in writing by mutual agreement of the parties.

15 105. If Respondent seeks permission to deviate from any approved work plan or schedule  
16 or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA  
17 for approval outlining the proposed modification and its basis. Respondent may not proceed with  
18 the requested deviation until receiving oral or written approval from the EPA Project Coordinator.

19 106. No informal advice, guidance, suggestion, or comment by the EPA Project  
20 Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or  
21 any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any  
22 formal approval required by this Consent Order, or to comply with all requirements of this  
23 Consent Order, unless it is formally modified.



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5 **XXXII. EFFECTIVE DATE**

6 107. The effective date of this Consent Order shall be the date it is signed by EPA.  
7

8 **XXXIII. NOTICE OF COMPLETION OF WORK**

9 108. When EPA determines, after EPA's review of the Final Focused Remedial  
10 Investigation Report and Final Focused Feasibility Study Report, that all Work has been fully  
11 performed in accordance with this Consent Order, with the exception of any continuing  
12 obligations required by this Consent Order, EPA will provide written notice of completion of  
13 Work to Respondent.

14 Agreed this 7 day of July, 2004 <sup>2005</sup>  
15 For Phoenix Newspapers, Inc.

16  
17 By: Todd Mayman

18  
19 Title: Secretary

20  
21 It is so ORDERED AND AGREED this 26<sup>th</sup> day of August, 2004 <sup>2005</sup>

22  
23 By: Kathleen H. Johnson  
24 Kathleen Johnson  
25 Chief, Federal Facilities and Site Cleanup Branch  
26 U.S. Environmental Protection Agency  
27 Region 9  
28

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## APPENDIX A

### STATEMENT OF WORK

#### FOCUSED REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

Phoenix Newspapers, Inc., 120 East Van Buren Street

PHOENIX, AZ

#### 1.0 INTRODUCTION

This Statement of Work (SOW) outlines the work to be performed by Phoenix Newspapers, Inc. ("Respondent") at the Phoenix Newspapers Site ("Site") located at 120 East Van Buren Street, Phoenix, Arizona, pursuant to the Administrative Order on Consent ("Consent Order") with the United States Environmental Protection Agency (EPA), issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This work will be referred to as a Focused Remedial Investigation and Feasibility Study ("Focused RI/FS"). The Focused RI/FS will be conducted to determine if the Site is or has been a source to groundwater contamination associated with the Motorola 52<sup>nd</sup> Street Superfund Site contaminants of potential concern (COPCs) (see Attachment A) and to ensure steps are taken to mitigate any source(s) remaining at the Site. As provided in the Consent Order, the work required and described under this SOW will be limited to only contamination for which originated at the Site.

The Focused RI/FS SOW general requirements are provided in Section 2.0 WORK TO BE CONDUCTED, and the specific work to be conducted is summarized below:

- The Respondent will first conduct a scoping exercise to identify potential COPC sources at the Site, and produce a Work Plan for the Focused RI/FS. (Section 3.0 SCOPING

1 PHASE)

- 2 • The Respondent will next identify and characterize the nature and extent of COPC  
3 sources in the soil and if necessary, in groundwater at the Site according to the Work  
4 Plan. If the results of the initial site characterization indicate sources of COPCs in the  
5 soils and/or groundwater, the Respondent will assess the risks of the identified  
6 contamination to human health and the environment. (Section 4.0 REMEDIAL  
7 INVESTIGATION)
- 8 • Finally, if EPA determines that the risks at the Site are unacceptable, the Respondent will  
9 be required to develop and evaluate remedial alternatives that would mitigate the risks.  
10 (Section 5.0 FEASIBILITY STUDY)

## 13 2.0 WORK TO BE CONDUCTED

14 The Respondent will conduct this Focused RI/FS and will produce deliverables to EPA  
15 for review and approval that are in accordance with the Consent Order, this SOW, "Guidance for  
16 Conducting Remedial Investigations and Feasibility Studies Under CERCLA, U.S. EPA, Office  
17 of Emergency and Remedial Response, October 1988" ("RI/FS Guidance"), presumptive remedy  
18 guidance for characterizing and selecting remedies at sites with volatile organic compounds in  
19 soils, and any other guidance documents that are relevant to conducting a Focused RI/FS. A  
20 summary of deliverables is provided in Attachment B and selected guidance and reference  
21 documents are included in Attachment C. **The RI/FS Guidance describes the report format  
22 and the required report content; relevant sections of the guidance are noted throughout  
23 this SOW in parentheses.**

26 The Respondent will furnish all necessary personnel, materials, and services needed, or  
27 incidental to, performing the Focused RI/FS, except as otherwise specified in the Consent Order.

1 All work performed under this SOW shall be under the direction and supervision of qualified  
2 personnel. All technical reports and other deliverables shall be prepared under the direction and  
3 supervision of an Arizona Professional Engineer or Registered Geologist.

4  
5 The RI and FS are interactive and may be conducted concurrently so that the data  
6 collected in the RI influences the development of remedial alternatives in the FS, which in turn  
7 affects the data needs and the scope of treatability studies, if they are necessary. In addition,  
8 EPA encourages presumptive remedies for sites with VOCs in soil, which will streamline the FS  
9 process towards remedy selection. The Final Focused RI/FS Report, as adopted by EPA, forms  
10 the basis for the selection of the Site remedy and will provide the information necessary to  
11 support the development of additional Records of Decision for the Motorola 52nd Street  
12 Superfund Site. The remedial action alternative selected by EPA will meet the cleanup standards  
13 specified in CERCLA Section 121.

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15 As specified in CERCLA Section 104(a)(1), EPA will provide oversight of the activities  
16 conducted by the Respondent throughout the Focused RI/FS, and the Respondent will support  
17 EPA's implementation of oversight activities. The Respondent shall produce Monthly Progress  
18 Reports according to the requirements in the Consent Order. The following sections describe the  
19 specific deliverables and requirements for the Focused RI/FS.

### 20 21 3.0 SCOPING PHASE (RI/FS Guidance, Chapter 2)

22 When scoping the specific aspects of a project, the Respondent must meet with EPA to  
23 discuss all project planning decisions and special concerns associated with the Site. The  
24 following activities will be performed by the Respondent as a function of the scoping process:

#### 25 26 3.1 Site Research (2.2)

27 The Respondent will conduct historical research of potential COPC use and disposal at  
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1 the Site, and submit a report summarizing the results to EPA. This information will be utilized  
2 to better scope the project and will guide the development of the subsequent Work Plans for  
3 additional data collection necessary to characterize the Site, better define potential applicable or  
4 relevant and appropriate requirements (ARARs), and narrow the range of preliminarily identified  
5 remedial alternatives. Tasks for site research and reporting are detailed in the following  
6 subsections.

### 8 3.1.1 Research Site Background

9 The Respondent will gather and analyze the existing Site background information, and  
10 conduct additional research as needed to identify potential COPC source areas at the Site. Before  
11 planning Focused RI/FS activities, all existing information will be thoroughly compiled and  
12 reviewed by the Respondent. Specifically, this will include presently available information  
13 relating to the varieties and quantities of hazardous substances at the Site, and past disposal  
14 practices. The research is expected to include records reviews and employee interviews. This  
15 report will also include results from any previous sampling events that may have been conducted.

16 The Respondent will refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data  
17 collection information sources. The Respondent shall use this information to develop a  
18 conceptual understanding of the Site, i.e., its operations, contaminant uses and disposal, and  
19 potential migration pathways. Data Quality Objectives (DQOs) will be established subject to  
20 EPA approval which specify the usefulness of existing data. Decisions on the necessary data and  
21 DQOs will be made by EPA.

### 25 3.1.2 Conduct Site Visit

26 The Respondent will conduct a Site visit during the project scoping phase to assist in  
27 developing a conceptual understanding of sources and areas of contamination as well as potential  
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1 exposure pathways and receptors at the Site. During the Site visit the Respondent should observe  
2 the area's physiography, hydrology, geology, and demographics, as well as natural resource,  
3 ecological and cultural features.

### 4 3.1.3 Research Report

5 The Respondent will submit a Research Report (RR) within sixty (60) days of the  
6 Consent Order Effective Date. The RR will contain a compilation and summary of the activities  
7 conducted above, and include a discussion of the potential COPC source areas known or  
8 suspected by the Respondent. The RR will contain (1) a narrative of the work completed, with  
9 detailed descriptions of the configuration, operation, and historical uses of the potential source  
10 areas, (2) detailed maps depicting all existing buildings and other Site features of interest,  
11 figures, and tables depicting the layout, locations, and uses of Site features, and (3) any  
12 recommendations for investigation of the areas. The RR shall also present a discussion of a  
13 preliminary conceptual site model. This conceptual site model shall identify any known or  
14 suspected sources of COPC contamination, types of contaminants and affected media, fate and  
15 transport of each contaminant in each medium and any known or potential human or  
16 environmental receptors. This conceptual site model will be refined as new data become  
17 available and presented in the Focused RI/FS Workplan, and reports.

### 18 3.2 Project Planning (2.2)

19 The Respondent will plan the specific project scope after the Research Report is  
20 completed. Project planning activities include those tasks described below such as identifying  
21 data needs, developing a work plan, designing a data collection program and identifying health  
22 and safety protocols. The Respondent will meet with EPA regarding activities described in the  
23 subsections below and before the drafting of the scoping deliverables.  
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1 3.2.1 Refine and Document Preliminary Remedial Action Objectives and Alternatives (2.2.3)

2 EPA requires the development of preliminary remedial action objectives (RAOs) for  
3 each potentially contaminated medium and identification of a preliminary range of remedial  
4 action alternatives and associated technologies for protecting human health and the environment.  
5 Accordingly, the RAOs should present potential exposure route(s) and receptor(s) and an  
6 acceptable contaminant level or range of levels for each potential exposure route. The RAOs  
7 should be specific as possible, but not so specific that the range of potential alternatives are  
8 limited. These RAOs are preliminary objectives, and are not final remediation goals, levels or  
9 standards. RAOs are revised throughout the Focused RI/FS process, and are typically finalized  
10 and documented in the Record of Decision (ROD).  
11

12 EPA has identified the following preliminary RAOs for the Site. These preliminary RAOs  
13 are relevant to COPCs listed in Attachment A that are from the Site, if any, and are not relevant  
14 to any other potential contaminants or COPCs from background sources such as native  
15 constituents in soil or anthropogenic off-Site sources (such as the regional groundwater for the  
16 Motorola 52nd Street Superfund Site OU3 Study Area) (hereafter, "background sources").  
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18 3.2.1.1 Human Receptors  
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20 The preliminary RAOs for groundwater are to prevent ingestion, dermal contact and  
21 inhalation from use of water, and indoor inhalation from water, having COPC levels in excess of  
22 appropriate MCLs, or if no MCLs, COPC concentrations resulting in an exceedance of the  
23 acceptable cancer risk range of  $10^{-6}$  to  $10^{-4}$  or non-cancer hazard index range of 0.1 to 1.  
24

25 The preliminary RAOs for soil are to prevent direct contact (ingestion and dermal) with  
26 soil or the inhalation of dust in ambient air or volatiles from soil or in indoor air present at COPC  
27 concentrations resulting in an exceedance of the acceptable cancer risk range of  $10^{-6}$  to  $10^{-4}$  or  
28 non-cancer hazard index range of 0.1 to 1.



Another preliminary RAO for soil is to prevent migration of COPCs in soils that would result in groundwater contamination in excess of MCLs, or if no MCLs, COPC concentrations resulting in an exceedance of the acceptable cancer risk range of  $10^{-6}$  to  $10^{-4}$  or non-cancer hazard index range of 0.1 to 1.

Cumulative cancer risk and non-cancer hazard index will be summed per receptor according to their relevant media.

#### 3.2.1.2 Ecological Receptors

The preliminary RAOs for certain ecological receptors is to prevent COPCs from threatening those ecological receptors important at the individual level of ecological organization (*i.e.* those listed threatened or endangered), above the hazard index of 1, and to ensure remedial activities conducted at the Site will not alter existing Site conditions so as to threaten wildlife populations and vegetation communities.

#### 3.2.1.3 Remedial Action Objectives Technical Memorandum

The Respondent will review and, if necessary, refine the preliminary RAOs for each medium actually or potentially contaminated from the Site (excluding contamination resulting from background sources). The Respondent will also include objectives for the use of institutional controls. The Respondent will then identify a preliminary range of broadly defined potential remedial action alternatives, associated technologies, and institutional controls, if necessary. The range of potential alternatives should encompass where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative. The Respondent should consider all presumptive site characterization and remedy selection guidance available for contaminated sites. Respondent will document the revised preliminary RAOs and alternatives in a Remedial Action Objectives Technical Memorandum and submit this document to EPA within thirty (30) days of EPA's approval of the Research Report.

#### 3.2.2 Document the Need for Treatability Studies (2.2.4)

1 If remedial actions involving treatment have been identified by the Respondent or EPA  
2 for source areas (excluding background sources) at the Site, treatability studies will be required  
3 except where the Respondent can demonstrate to EPA's satisfaction that they are not needed.  
4 Where treatability studies are needed, plans for initial treatability testing activities (such as  
5 research and study design) will be submitted in the work plan described in Section 3.3.1 and  
6 planned to occur concurrently with site characterization activities.

### 7 3.2.3 Begin Preliminary Identification of Potential ARARs (2.2.5)

8 The Respondent will conduct a preliminary identification of potential state and federal  
9 ARARs (chemical-specific, location-specific and action-specific) to assist in the refinement of  
10 RAOs, and the initial identification of remedial alternatives and ARARs associated with  
11 particular actions. ARAR identification will continue as Site conditions, contaminants, and  
12 RAOs are better defined. Respondent will indicate the initial results of this review in the  
13 Remedial Action Objectives Technical Memorandum, and continue to revise in deliverables due  
14 throughout the Focused RI/FS process.

### 15 3.3 Planning Deliverables (2.3)

16 At the conclusion of the project planning phase, the Respondent will submit an Focused  
17 RI/FS Work Plan which includes a sampling and analysis plan and health and safety plan. These  
18 planning documents must be approved by EPA prior, to the initiation of field activities. These  
19 deliverables are described in detail in the following subsections.

#### 20 3.3.1 Focused RI/FS Work Plan (2.3.1)

21 Respondent will submit to EPA a Draft Focused Remedial Investigation/Feasibility Study  
22 Work Plan ("WP") within sixty (60) days of EPA's approval of the Research Report. If the work  
23 required to complete the WP is significantly greater than anticipated by the EPA and Respondent,  
24 the parties will agree to extend this deadline, in accordance with Section XXXI of the Consent  
25 Order, to at least ninety (90) days. The WP will document the decisions and evaluations  
26 completed during the scoping process. The RI and FS activities that the WP shall address are  
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1 described in more detail in Sections 4.0 and 5.0. The WP should be developed in conjunction  
2 with the sampling and analysis plan and the health and safety plan, although each plan may be  
3 delivered under separate cover. The WP will include a statement of the problem(s) and potential  
4 problem(s) posed by the Site and the objectives of the Focused RI/FS, a comprehensive  
5 description of the work to be performed to meet those objectives, including the methodologies to  
6 be utilized and the rationale for performing the required activities, as well as a corresponding  
7 schedule for completion. Thirty (30) days following comment by EPA, the Respondent will  
8 submit a Final WP, which satisfactorily addresses EPA's comments.

9         The Respondent will include in the WP: a Site background summary setting forth the Site  
10 description, including the Site's geographic location, and to the extent possible, a description of  
11 the Site's physiography, hydrology, geology, demographics, ecological, cultural and natural  
12 resource features; a synopsis of the Site history and a description of previous responses that have  
13 been conducted at the Site by local, state, federal, or private parties; and a summary of the  
14 existing data in terms of physical and chemical characteristics of the contaminants identified, and  
15 their distribution among the environmental media at the Site. In addition, the Respondent will  
16 include in the WP a description of the site management strategy developed by EPA during  
17 scoping, a preliminary identification of remedial alternatives, data needs for evaluation of  
18 remedial alternatives, a process for and manner of identifying Federal and State ARARs  
19 (chemical-specific, location-specific and action-specific), and will reflect coordination with  
20 treatability study requirements, if needed.

21         The Respondent will present in the WP a discussion of a preliminary conceptual site  
22 model. The Respondent will identify any known or suspected sources of COPC contamination,  
23 types of contaminants and affected media, fate and transport of each contaminant in each  
24 medium and any known or potential human or environmental receptors. The Respondent will  
25 refine the conceptual site model as new data become available and present it in the Focused  
26 Remedial Investigation Report (see Section 4.3). The conceptual site model will be based on the  
27 research work completed during scoping, and include detailed descriptions of the configuration,  
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1 operation, and historical uses of the potential source areas, detailed maps depicting all existing  
2 buildings and other Site features of interest, figures, and tables depicting the layout, locations,  
3 and uses of Site features, and any recommendations for investigation of the areas.

4         The Respondent will also identify the current use of the Site in accordance with EPA's  
5 "Land Use in CERCLA Remedy Selection Process," OSWER Directive No. 9355.7-04, May 25,  
6 1995 (hereinafter the "Land Use Guidance"), including the use(s) of property located over any  
7 ground water plume, if applicable, and will state the basis for these determinations. Information  
8 regarding existing Site use should also be gathered to assist in identifying the reasonably  
9 anticipated future use of the Site. If EPA determines it is appropriate, Respondent shall conduct  
10 a reuse assessment in accordance with the Land Use Guidance and "Reuse Assessments: A Tool  
11 to Implement the Superfund Land Use Directive," OSWER 9355.7-06P, June 4, 2001, to identify  
12 the reasonably anticipated future use of the Site. Respondent shall document the reuse  
13 assessment in the WP, if conducted.

14         Finally, the major part of the WP is a detailed description of the tasks to be performed,  
15 information needed for each task, information to be produced during and at the conclusion of  
16 each task, and a description of the work products that will be submitted to EPA. This includes  
17 the deliverables set forth in the remainder of this statement of work; a schedule for each of the  
18 required activities which is consistent with the RI/FS guidance; and a project management plan,  
19 including a data management plan (e.g., requirements for project management systems and  
20 software, minimum data requirements, data format and backup data management), and reports,  
21 meetings and presentations to EPA at the conclusion of each major phase of the Focused RI/FS.  
22 The Respondent will refer to Appendix B of the RI/FS Guidance for a comprehensive description  
23 of the contents of the required WP.

24         Because of the unknown nature of the Site and iterative nature of the Focused RI/FS, the  
25 Focused RI/FS may be most efficiently conducted in phases. Additional data requirements and  
26 analyses may be identified throughout the process. The Respondent will submit a Technical  
27 Memorandum documenting the need for additional data requirements to be identified at the  
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1 request of EPA or as otherwise necessary within thirty (30) days of identification. Upon  
2 approval, Respondent will incorporate the Technical Memorandums into the WP. The  
3 Respondent is responsible for fulfilling and identifying the Data Quality Objectives (DQOs)  
4 described in the next section whenever such additional data and analysis needs are identified by  
5 EPA consistent with the general scope and objectives of this Focused RI/FS.

### 6 3.3.2 Sampling and Analysis Plan (2.3.2)

7 The Respondent will submit a sampling and analysis plan (SAP) within ninety (90) days  
8 of EPA's approval of the Research Report. The SAP is produced to ensure that sample collection  
9 and analytical activities are conducted in accordance with technically acceptable protocols and  
10 that the data meet DQOs. The SAP provides a mechanism for planning field activities and  
11 consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP).

12 In the FSP, the Respondent will define in detail the sampling and data-gathering methods  
13 that will be used on the project. Respondent will include sampling objectives, sample location  
14 and frequency, sampling equipment and procedures, and sample handling and analysis. In the  
15 QAPP, Respondent will describe the project objectives and organization, functional activities,  
16 and quality assurance and quality control (QA/QC) protocols that will be used to achieve the  
17 desired DQOs. Respondent will prepare the QAPP in accordance with "Guidance for Data  
18 Quality Objectives (DQOs) Process (QA/G-4)" (EPA/600/R-96/055, August 2000), "EPA  
19 Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001),  
20 and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December  
21 2002). In addition, Respondent will address in the QAPP sampling procedures, sample custody,  
22 analytical procedures, and data reduction, validation, reporting and personnel qualifications.

23 The Respondent will demonstrate to EPA's satisfaction that each laboratory it may use is  
24 qualified to conduct the proposed work. The Respondent will only use laboratories that have a  
25 documented Quality Assurance Program that complies with EPA and State requirements. The  
26 laboratory QA program must be submitted to EPA. This includes use of methods and analytical  
27 protocols for the COPCs in the media of interest within detection and quantification limits  
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1 consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA.  
2 EPA may require that the Respondent submit detailed information to demonstrate that the  
3 laboratory is qualified to conduct the work, including information on personnel qualifications,  
4 equipment and material specifications. The Respondent will provide assurances that EPA has  
5 access to laboratory personnel, equipment and records, sample collection, transportation and  
6 analysis. Finally, laboratories must provide data according to "Laboratory Documentation  
7 Requirements for Data Validation Packages", July 1997 (EPA 9QA-07-97) or other equivalent  
8 documentation as determined by EPA.

### 9 3.3.3 Site Health and Safety Plan (2.3.3)

10 The Respondent will submit a health and safety plan (HASP) within ninety (90) days of  
11 EPA's approval of the Research Report prepared in conformance with the health and safety  
12 program of the Respondent, and in compliance with Occupational Safety and Health  
13 Administration (OSHA) regulations and protocols. The HASP will include the 11 elements  
14 described in the RI/FS Guidance, such as a health and safety risk analysis, a description of  
15 monitoring and personnel protective equipment, medical monitoring, and site control. It should  
16 be noted that EPA does not "approve" the HASP, but rather EPA reviews it to ensure that all  
17 necessary elements are included, and that the plan provides for the protection of human health  
18 and the environment.

### 19 3.4 Community Involvement

20 The development and implementation of community involvement activities for the  
21 Focused RI/FS are the responsibility of EPA. The critical community involvement planning  
22 steps performed by EPA include conducting community interviews and developing a Focused  
23 community involvement plan (CIP). Although implementation of the CIP is the responsibility of  
24 EPA, the Respondent may assist by providing information regarding the Site's history,  
25 participating in public meetings, or by preparing fact sheets for distribution to the general public.  
26 The extent of Respondent involvement in community involvement activities is left to the  
27 discretion of EPA. Community involvement activities conducted by Respondent will be subject  
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1 to oversight by EPA.

#### 2 4.0 REMEDIAL INVESTIGATION (RI/FS Guidance, Chapter 3)

3 During this phase of the Focused RI/FS, the Respondent will begin to implement the  
4 approved WP and SAP. The RI activities will include performance of the field activities  
5 described in the subsections below including preparation and submission of a Focused Remedial  
6 Investigation Report (FRIR) (see Section 4.3). The overall objective of this phase is to collect  
7 data to describe the COPC source areas at the Site that may pose a threat to human health or the  
8 environment. This is accomplished by first determining the physiography, geology, and  
9 hydrology at the Site. The Respondent will identify the sources of COPC contamination at the  
10 Site and define the nature, extent, and volume of the sources of contamination, including their  
11 physical and chemical constituents as well as their concentrations at incremental locations to  
12 background in the affected media. The Respondent will also investigate the extent of migration  
13 of this contamination, including surface and subsurface pathways of migration, as well as its  
14 volume and any changes in its physical or chemical characteristics, to provide for a  
15 comprehensive understanding of the nature and extent of contamination at the Site for that  
16 contamination for which the Site is the source. Using this information, contaminant fate and  
17 transport is then determined and projected. A focused risk assessment is then conducted  
18 considering the chemical concentrations detected and/or projected in the subsurface.

19  
20 The Respondent will collect and analyze field data to provide the information required to  
21 accomplish the objectives of the study. In view of the unknown Site conditions, activities are  
22 often iterative, and to satisfy the objectives of the Focused RI/FS it may be necessary for the  
23 Respondent to supplement the work specified in the initial WP. As described in Section 3.3.1 this  
24 may be done through submission of Technical Memorandums either initiated by the Respondent  
25 or requested by EPA.

#### 26 4.1 Field Investigation (3.2)

27 The field investigation includes the gathering of data to define Site physical and  
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1 biological characteristics, sources of contamination, and the nature and extent of contamination  
2 at the Site. The Respondent will perform these activities in accordance with the WP, SAP, and  
3 HASP. The Respondent will notify EPA with a Notification of Initiation of Field Work (FW) at  
4 least fifteen (15) days prior to initiating any physical work in the field. The Notification will  
5 include the planned dates for field activities so that EPA may adequately schedule oversight  
6 tasks. The Respondent will notify EPA in writing within five (5) days of completion of field  
7 work activities, with a Notification of Completion of Field Work. Upon submission of the  
8 Notification of Field Work, Respondent will provide Weekly Progress Reports according to the  
9 requirements in the Consent Order. Weekly reports may be discontinued upon Notification of  
10 Completion of Field Work.

11 Field work activities may include field lay out of the sampling grid, initiating sampling,  
12 installation and calibration of equipment, initiation of analysis, etc. Field work activities will  
13 address the following:

14 4.1.1 Field Support Activities (3.2.1)

15 The Respondent will continue field support activities following approval of the WP and  
16 SAP according to the schedule in the WP. Field support activities may include obtaining access  
17 to the Site, scheduling, procuring equipment, office space, laboratory services, and/or  
18 contractors. Respondent will document these types of activities in the Monthly or Weekly  
19 Progress Reports, as appropriate, according to the requirements in the Consent Order.

20 4.1.2 Physical and Biological Characteristics (3.2.2)

21 The Respondent will collect data on the physical and biological characteristics of the Site  
22 and its surrounding areas including the physiography, geology, and hydrology, and specific  
23 physical characteristics identified in the WP. The Respondent will ascertain this information  
24 through a combination of physical measurements, observations, and sampling efforts and the  
25 Respondent will utilize the information to define potential transport pathways and human and  
26 ecological receptor populations for contamination detected at the Site that is not from  
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1 background sources. In defining the Site's physical characteristics, the Respondent will also  
2 obtain sufficient engineering data for the projection of contaminant fate and transport, and  
3 development and screening of remedial action alternatives for contamination detected at the Site  
4 that is not from background sources, including information to assess treatment technologies.

#### 5 4.1.3 Sources of Contamination (3.2.3)

6 The Respondent will locate each source of COPC contamination detected at the Site that  
7 is not from background sources. For each such location, the areal extent and depth of  
8 contamination will be determined by sampling at incremental depths on a sampling grid, or  
9 appropriately targeted locations based on the CSM developed in the WP, and refined throughout  
10 the RI. Respondent will determine the physical characteristics and chemical constituents and  
11 their concentrations for all known and discovered sources of COPC contamination. The  
12 Respondent will conduct sufficient sampling to define the boundaries of the contaminant sources  
13 to the level established in the QAPP and DQOs.

14 In defining the source of contamination from the Site, excluding background sources,  
15 Respondent will analyze the potential for contaminant release (e.g., long term leaching from  
16 soil), contaminant mobility and persistence, and characteristics important for evaluating remedial  
17 actions, including information to assess treatment technologies.

#### 18 4.1.4 Nature and Extent of Contamination (3.2.4)

19 As a final step during the field investigation, the Respondent will gather information to be  
20 able to describe the nature and extent of contamination detected at the Site that is not from  
21 background sources in the Focused Remedial Investigation Report ("FRIR"). To describe the  
22 nature and extent of said contamination, the Respondent will utilize the information on Site  
23 physical and biological characteristics and Site sources of contamination to give a preliminary  
24 estimate of the contaminants that may have migrated. The Respondent will then implement an  
25 iterative monitoring program and any study program identified in the WP or SAP such that by  
26 using analytical techniques sufficient to detect and quantify the concentration of contaminants,  
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1 the migration of contaminants through the various media at the Site can be determined.

2 In addition, the Respondent will gather data for calculations of contaminant fate and  
3 transport. This process is continued until the area and depth of contamination are known to the  
4 level of contamination established in the QAPP and DQOs. The Respondent will use the  
5 information on the nature and extent of contamination to determine the level of risk presented by  
6 the Site, and determine aspects of the appropriate remedial action alternatives to be evaluated.

#### 7 4.2 Data Analyses/Evaluate Site Characteristics (3.4.1)

8 The Respondent will analyze and evaluate the data in order to be able to describe in the  
9 FRIR the Site's: (1) physical and biological characteristics, (2) source characteristics of  
10 contaminants detected at the Site that are not from background sources, (3) nature and extent of  
11 contamination at the Site (4) contaminant fate and transport at the Site, and (5) risks to human  
12 health and the environment from COPCs listed in Attachment A. These elements are described  
13 in the subsections below:

##### 14 4.2.1 Site Characteristics (3.4.1)

15 The Respondent will utilize the results of the Site physical characteristics, source  
16 characteristics, and extent of contamination analyses in the analysis of contaminant fate and  
17 transport. The evaluation will include the actual and potential magnitude of releases from the  
18 sources, and horizontal and vertical spread of contamination as well as mobility and persistence  
19 of contaminants. Impacts to the Site from background sources will also be characterized, to the  
20 extent data is available.

21 Where modeling is appropriate, Respondent will identify such models to EPA in the  
22 Focused RI/FS WP and if necessary, as supplemented by a Technical Memorandum. All data  
23 and programming, including any proprietary programs, will be made available to EPA together  
24 with a sensitivity analysis. The Respondent will agree to discuss and then collect any data gaps  
25 identified by the EPA that are needed to complete the Risk Assessment (RA). (See "Guidance  
26 for Data Useability in Risk Assessment - OSWER Directive #9285.7-05, October 1990.)  
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Also, Respondent will provide in this evaluation any information relevant to Site characteristics necessary for evaluation of the need for remedial action in the RA and for the development and an evaluation of remedial alternatives. Analyses of data collected for Site characterization will meet the DQOs developed in the QAPP stated in the SAP (or revised during the RI).

#### 4.2.2 Risk Assessment (RA) (3.4.2)

Respondent will submit a Focused RA in the FRIR that is limited to a baseline evaluation of COPCs listed in Attachment A from on-Site and background sources and evaluate baseline COPC conditions as developed through the field investigations and data analysis. The purpose of including a background source risk evaluation in the baseline risk assessment will be to evaluate total risk to human and ecological health at the Site and also to evaluate the contribution of background source risk to the total human and ecological health risk from COPCs at the Site. In the assessment, Respondent will consider both current and possible future uses of the Site. The RA will identify possible exposure pathways, evaluate contaminant fate and transport, and if necessary, estimate points of exposure and characterize health risks. Respondent will base exposure scenarios on land and groundwater use assumptions that will be developed in collaboration with the EPA.

#### 4.2.3 Data Management Procedures (3.5)

The Respondent will consistently document the quality and validity of field and laboratory data compiled during the RI according to the procedures established in the WP. The following subsections describe the data management procedures expected throughout the Focused RI/FS:

##### 4.2.3.1 Document Field Activities (3.5.1)

The Respondent will ensure that all information gathered during Site characterization will be consistently documented and adequately recorded by the Respondent in well maintained field logs and laboratory reports. The method(s) of documentation must be specified in the WP and/or

1 the SAP. Field logs must be utilized to document observations, measurements, and significant  
2 events that have occurred during field activities. Laboratory reports must document sample  
3 custody, analytical responsibility, analytical results, adherence to prescribed protocols,  
4 nonconformity events, corrective measures, and/or data deficiencies. Ultimately, these documents  
5 will be compiled and submitted to EPA as appendices to the FRIR; however, they may be  
6 requested by EPA throughout performance of the RI activities and/or in the Weekly Progress  
7 Reports.

#### 8 4.2.3.2 Sample Management and Tracking (3.5.2; 3.5.3)

9 The Respondent will maintain field reports, sample shipment records, analytical results,  
10 and QA/QC reports to ensure that only validated analytical data are reported and utilized in the  
11 development and evaluation of remedial alternatives. Analytical results developed under the WP  
12 will not be included in any Site characterization reports unless accompanied by or  
13 cross-referenced to the corresponding QA/QC report.

14 In addition, the Respondent will establish a data security system to safeguard chain-of-  
15 custody forms and other project records to prevent loss, damage, or alteration of project  
16 documentation.

#### 17 4.2.3.3 Database Management

18 If groundwater data is collected, the Respondent will maintain this data in an electronic  
19 database, the Respondent will comply with the most recent Arizona Department of  
20 Environmental Quality Groundwater Data Submittal Guidance Document, currently Version 3.1,  
21 dated December 2003, and any additional requirements EPA deems necessary.

#### 22 4.3 Focused Remedial Investigation Report (3.7.3)

23 The Respondent will submit a Draft Focused Remedial Investigation Report (FRIR) to  
24 EPA within sixty (60) days of Notification of Completion of Fieldwork. If the work required to  
25 complete the FRIR is significantly greater than anticipated by the EPA and Respondent, the  
26 parties will agree to extend this deadline, in accordance with Section XXXI of the Consent  
27  
28

Order, to at least ninety (90) days of Notification of Completion of Fieldwork. In the FRIR Respondent will review and summarize results of activities conducted in the previous subsections to characterize and assess the risks to human health and the environment at the Site for contamination detected at the Site that is not from background sources. Respondent will include an updated site conceptual model and will evaluate the risks to human health and the environment through a RA. For example, the FRIR will describe and display site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, such as sources of contamination, nature and extent of contamination and the fate and transport of contaminants for contamination detected at the Site that is not from background sources. The Respondent will refer to the RI/FS Guidance for an outline of the FRIR format and contents. Thirty (30) days following comment by EPA, the Respondent will submit a Final FRIR which satisfactorily address EPA's comments.

#### 5.0 FEASIBILITY STUDY (RI/FS Guidance, Chapter 4)

If EPA determines that the results of the FRIR identify risks to human health and/or the environment and the source of those risks are due to contaminants released from the Site, the Respondent will conduct an evaluation of the remedial alternatives that will address those risks and complete a Focused Feasibility Study (FFS) for EPA to use in determining the remedy for the Site. The following activities detail the FFS process:

##### 5.1 Development and Screening of Remedial Alternatives (4.2)

The Respondent will develop and evaluate a range of appropriate waste management options that at a minimum ensure protection of human health and the environment, concurrent with the RI Site characterization task. This range of alternatives should include as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but varying in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action

1 alternative. Respondent should consider guidance related to presumptive remedies for COPCs in  
2 soils. The results of this will provide a basis for completion of the next subtask.

### 3 5.2 Detailed Analysis of Remedial Alternatives (RI/FS Guidance, Chapter 6)

4 The Respondent will conduct a detailed analysis of the remedial alternatives screened in  
5 the previous subtask. The detailed analysis will consist of an analysis of each option against the  
6 set of nine evaluation criteria and a comparative analysis of all options using the same evaluation  
7 criteria as a basis for comparison: (1) overall protection of human health and the environment;  
8 (2) compliance with ARARS; (3) long-term effectiveness and permanence; (4) reduction of  
9 toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8)  
10 state (or support agency) acceptance; and (9) community acceptance. Criteria 8 and 9 may be  
11 considered after the FFS Report has been released to the general public. If any of the retained  
12 remedial alternatives includes institutional controls which require state or community  
13 participation to implement, monitor, or enforce, then state and community acceptance must be  
14 determined prior to public release of the FFS Report. This analysis is the final task to be  
15 performed by the Respondent during the FFS, and will be submitted as part of the Final FFS  
16 Report.

### 17 5.3 Focused Feasibility Study Report (6.5)

18 The Respondent will submit a Draft FFS Report (FFSR) to EPA within sixty (60) days of  
19 EPA approval of the FRIR. If the work required to complete the FFSR is significantly greater  
20 than anticipated by the EPA and Respondent, the parties will agree to extend this deadline, in  
21 accordance with Section XXXI of the Consent Order, to at least ninety (90) days of EPA  
22 approval of the FRIR. This FFSR, as ultimately adopted or amended by EPA, provides a basis  
23 for remedy selection by EPA and documents the development and analysis of remedial  
24 alternatives. The Respondent will refer to the RI/FS Guidance for an outline of the FFSR format  
25 and the required report content. The Respondent will submit a Final FFSR within twenty-one  
26 (21) Days of EPA comments. Once EPA's comments are addressed by the Respondent to EPA's  
27 satisfaction, the Final FFSR may be bound with the FRIR.  
28

----- ATTACHMENT A -----  
**CONTAMINANTS OF POTENTIAL CONCERN (COPC'S)**  
*Potential Site Characterization Screening Levels and Remedial Action Levels*

Data Sources: 1EPA Region 9 PRGs Table, 10/20/04 2ADHS 1999 Update AAAQGs, 5/11/99 3ADHS Draft Arizona Ambient Air HGBLs, 5/11/99 4EPA Draft Subsurface Vapor Intrusion Guidance, Table 2c, 11/29/02 5ADEQ A Screening Method to Determine Soil Concentrations Protective of Groundwater Quality, 09/96 ----- Chemical Name	Air (µg/m³)			Soil (mg/kg)				Soil Gas (µg/m³)	Groundwater (µg/L)			
	Direct Contact Exposure Pathways					Migration to Groundwater		Migration to Indoor Air (Vapor Intrusion)	Direct Contact Exposure Pathway		2002 Max. Detections	
	Annual 30 yr.	Annual 70 yr -24 Hour		Residential - Non Res.					EPA PRG¹	EPA MCL/ AIDEQ AWQS		
	EPA PRG¹	AAAQGs Annual-24 Hour²	ADHS HBGLs³	EPA PRGs¹	ADEQ SRLs	EPA SSLs DAF 1-20¹	ADEQ GPLs⁵	EPA SSLs⁴ AF 0.1; 1x10⁻⁴ risk			OU2 Area	OU3 Area
Chloroethane/Ethyl Chloride (CA)	2.3	N/A	4300-43000	3.0 - 6.5	1100-4200	N/A	N/A	100000	4.6	N/A	160	NS
1,1-Dichloroethane (1,1-DCA)	520	N/A-3200	210-2100	510-1700	500-1700	1.0-23	N/A	5000	810	N/A	110	50
1,2-Dichloroethane (1,2-DCA)	0.074	0.038-14	0.73-43	0.28 - 0.60	2.5-5.5	0.001-0.02	0.21	0.94	0.12	5	ND	0.6
1,1-Dichloroethylene (1,1-DCE)	210	N/A-63	0.38-140	120 - 410	0.36-0.8	0.003-0.06	0.81	2000	340	7	130	60
cis-1,2-Dichloroethylene (cis-1,2-DCE)	37	N/A-6300	15-150	43-150	31-100	0.02-0.4	4.9	N/A	61	70	220	150
trans-1,2-Dichloroethylene (trans-1,2-DCE)	73		30-300	69-230	78-270	0.03-0.7	8.4	N/A	120	100	1.4	3
Tetrachloroethylene (PCE)	0.032	1.7-640	15-150	0.48-1.3	53-170	0.003-0.06	1.3	8.1	0.10	5	15	19
1,1,1-Trichloroethane (1,1,1-TCA)	2300	N/A-15000	430-4300	1200	1200-4800	0.1-2	1.0	22000	3200	200	2.4	ND
1,1,2-Trichloroethane (1,1,2-TCA)	0.12	0.062-23	1.2-60	0.73-1.6	6.5-15	0.0009-0.02	N/A	1.5	0.2	5	ND	ND
Trichloroethene (TCE)	0.017	0.58-210	9-90	0.053-0.11	27-70	0.003 - 0.06	0.61	22	0.028	5	650	720
Vinyl Chloride/Chloroethene (CE)	0.11	0.012-4.3	0.02-N/A	0.079-0.75	0.016-0.035	0.0007-0.01	N/A	2.8	0.02	2	16	0.3
1,4-Dioxane	0.61	N/A-710	6-N/A	44-160	400-1700	N/A	N/A	N/A	6.1	N/A	11	12

List of Acronyms

EPA = EPA Region 9  
 AAAQGs = Arizona Ambient Air Quality Guidelines  
 SSL = Soil Screening Levels  
 AF = Soil Gas to Indoor Air Attenuation Factor  
 AWQS = AAC Aquifer Water Quality Standards

ADEQ = Arizona Department of Quality  
 PRG = Preliminary Remediation Goal  
 GPL = Groundwater Protection Levels  
 MCL = National Primary Drinking Water Standards Maximum Contaminant Level  
 N/A = Not Available

ADHS = Arizona Department of Health Services  
 SRL = Soil Remediation Levels, Arizona Administrative Code (AAC) Title 18, Ch 7 Appendix A  
 DAF = Dilution Attenuation Factor  
 ND = Non Detect  
 NS = Not Sampled

-----ATTACHMENT B-----

SUMMARY OF DELIVERABLES

SOW Section	Submittals and Deliverables	Due Date
2.0	Monthly Progress Reports	One week after last day of month after effective date (ED)
3.1.3	Research Report (RR)	60 days after ED
3.2.1	Remedial Action Objectives Technical Memorandum	30 days after EPA approval of RR
3.3.1	Draft Focused RI/FS Work Plan (WP)*	60 days after EPA approval of RR
3.3.1	Technical Memorandums (to supplement WP)	Within 30 days as identified or requested
3.3.2	Draft Sampling and Analysis Plan (SAP)*	90 days after EPA approval of RR
3.3.3	Draft Site Health and Safety Plan (HASP)*	90 days after EPA approval of RR
4.1	Notification of Initiation of Field Work (FW)	15 days in advance
4.1	Weekly Progress Reports	Each Friday during FW
4.1	Notification of Completion of Field Work (FW)	5 days after completion of FW
4.3	Draft Focused Remedial Investigation Report (FRIR)*	60 days after completion of FW
5.3	Draft Focused Feasibility Study Report (FFSR)*	60 days after approval of Final FRIR
3.3.1 3.3.2 3.3.3 4.3 5.3	*Final Deliverables	30 days after receipt of EPA comment



----- ATTACHMENT C-----

REFERENCES

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process:

"The National Oil and Hazardous Substances Pollution Contingency Plan" Final Rule, Federal Register 40 CFR Part 300, March 8, 1990.

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," U.S. EPA, Office of Emergency and Remedial Response, Interim Final, OSWER Directive No. 9355.3-01, EPA-540-G-89-004, October 1988.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," Volume I, U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.1(c), July 1, 1991.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies, Volume II" U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.1(d), July 1, 1991.

"Getting Ready: Scoping the RI/FS," U.S. EPA, Office of Emergency and Remedial Response, EPA-9355.3-01-FS1, November 1989.

"A Compendium of Superfund Field Operations Methods," Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA-540-P-87-001a, OSWER Directive No. 9355.0-14, August 1987.

"Guidance to Management of Investigation-Derived Wastes," U.S. EPA Office of Solid Waste and Emergency Response, Publication 9345.3-03GS, January 1992.

"EPA Requirements for Quality Management Plans (QA/R-2)," EPA-240-B-01-002, March 2001.

"EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA-240-B-01-003, March 2001.

"Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002).

1 "Data Quality Objectives Process for Superfund," U.S. EPA, Office of Solid Waste and  
2 Emergency Response, OSWER Directive No. 9335.9-01A., EPA-540-R-93-071, September  
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4 "Guidance for the Data Quality Objectives Process," U.S. EPA Quality Assurance Management  
5 Staff, EPA QA/G-4, EPA 600-R-96-055, August 2000.

6 "Guidance for the Data Quality Objectives Process for Hazardous Waste Sites," U.S. EPA  
7 Quality Assurance Management Staff, EPA QA/G-4HW, EPA-600-R-00-007, January 2000.

8 "Laboratory Documentation Requirements for Data Validation Packages", EPA Region 9,  
9 EPA9QA-07-97, July 1997.

10 "Guidance for Preparing Standard Operating Procedures (SOPs)," Office of Environmental  
11 Information, EPA QA/G-6, EPA-240-B-01-004, March 2001.

12 "User's Guide to the EPA Contract Laboratory," U.S. EPA, Sample Management Office.  
13 OSWER Directive No. 9240.0-01D, January 1991.

14 "NIOSH Manual of Analytical Methods, 2<sup>nd</sup> Edition. Volumes I-VII for the 3<sup>rd</sup> edition, Volumes I  
15 and II, " National Institute of Occupational Safety and Health.

16 "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements,"  
17 U.S. EPA Office of Emergency and Remedial Response, OSWER Directive No. 9234.0-05, July  
18 9, 1987.

19 "CERCLA Compliance with Other Laws Manual (draft)," Two Volumes, U.S. EPA, Office of  
20 Emergency and Remedial Response, OSWER Directive No. 9234.1-01 and -02, August 1988 .

21 "NEIC Policies and Procedures Manual, " EPA-330-9-78-001-R, May 1978, revised August  
22 1991, .

23 "Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions," U.S.  
24 EPA Office of Solid Waste and Emergency Response, OSWER Directive No. 9355.7-03,  
25 February 1992.

26 "Procedures for Planning and Implementing Off-Site Response Actions", Federal Register,  
27 Volume 50, Number 214. pages 45933-45937, November 1985.

28 "Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites (draft)," U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9283.1-2.

"Presumptive Remedies: Site Characterization and Technology Selection For CERCLA Sites

1 With Volatile Organic Compounds In Soils", U.S. EPA, Office of Solid Waste and Emergency  
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3 "User's Guide to the VOC in Soils Presumptive Remedy", U.S. EPA, Office of Solid Waste and  
4 Emergency Response, OSWER Directive No. 9355.0-63FS, EPA 540-F-96-008, July 1996.

5 "Presumptive Remedy: Supplemental Bulletin Multi-Phase Extraction (MPE) Technology for  
6 VOCs in Soil and Ground Water," April 1997.

7 "Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground  
8 Water at CERCLA Sites," U.S. EPA Office of Solid Waste and Emergency Response, OSWER  
9 Directive No. 9283.1-12, EPA 540-R-96-023, October 1996.

10 "Treatability Studies Under CERCLA", U.S. EPA Office of Solid Waste and Emergency  
11 Response, EPA-540R-92-071a, October 1992.

12 "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy  
13 Selection Decision Documents", U.S. EPA Office of Solid Waste and Emergency Response,  
14 EPA 540-R-98-031, OSWER Directive No. 9200.1-23P, PB98-963241, July 1999.

15 "Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part  
16 A)," U.S. EPA Office of Emergency and Remedial Response, Interim Final, EPA-540-1-89-002,  
17 OSWER Directive No. 9285.7-02B, December 1989.

18 "Human Health Toxicity Values in Superfund Risk Assessments", OSWER Directive No.  
19 9285.7-53, December 2003.

20 "Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part  
21 B, Development of Risk-based Preliminary Remediation Goals; Part C, Risk Evaluation of  
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24 "Ecological Risk Assessment Guidance for Superfund: Process for Designing & Conducting  
25 Ecological Risk Assessments," U.S. EPA, OSWER Directive No. 9285.7-25, June 1997.

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28 Studies (RI/FS) Conducted by Potentially Responsible Parties," U.S. EPA Office of Solid Waste  
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Directive No. 9355.0-30, April 22, 1991.

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3 "Soil Screening Guidance: Fact Sheet," U.S. EPA Office of Solid Waste and Emergency  
4 Response, Publication 9355.4-1FSA, EPA-540-F-95-041, July 1996.

5 "A Screening Method to Determine Soil Concentrations Protective of Groundwater Quality",  
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Standards/Policy Task Force, September 1996.

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10 "Health and Safety Requirements of Employees Employed in Field Activities," U.S. EPA, Office  
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12 OSHA Regulations in 29 CFR 1910.120, Federal Register 45654, December 19, 1986.

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24 "Interim Guidance on Administrative Records for Selection of CERCLA Response Actions,"  
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26 "Superfund Community Involvement Handbook," U.S. EPA, Office of Emergency and Remedial  
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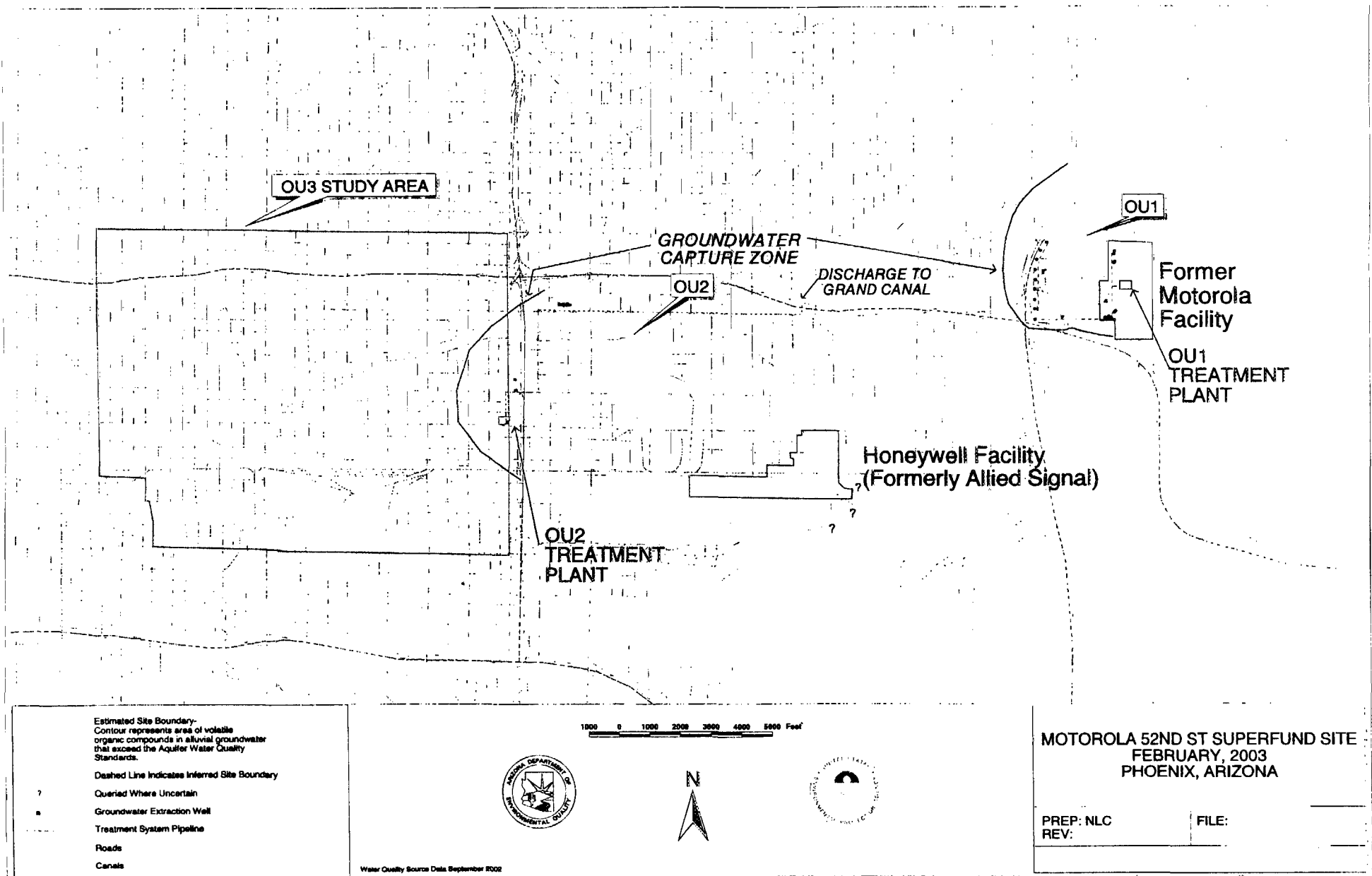
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4 Environmental Quality Waste Programs Division, Superfund Programs Section, December 2003.

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6 Institutional Controls at Superfund and RCRA Corrective Action Cleanups," OSWER 9355.0-  
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10 "Reuse Assessments: A Tool to Implement the Superfund Land Use Directive," OSWER 9355.7-  
11 06P, June 4, 2001.

# APPENDIX B



1 Consent Order  
2 PNI Site  
3 Docket No. 2004-31

### 4 Appendix C

5 Dear [R.A. for EPA Region 9]:

6 I am the [chief financial officer] of [name and address of firm]. This letter is in support of this  
7 firm's use of the financial test to demonstrate financial assurance for its Work obligations as  
8 defined in that certain Administrative Order on Consent for Focused Remedial Investigation and  
9 Feasibility Study, U.S. EPA Region 9, CERCLA Docket No. 2004-31 ("Consent Order"). The  
10 Consent Order requires this firm to post financial assurance in an amount equal to [the amount of  
11 the Work required by the Consent Order] \$XXXXXX ("FA Amount").

12 I hereby certify to the U.S. Environmental Protection Agency, based on this firm's independently  
13 audited, year-end financial statements for its latest completed fiscal year, ended [date], that:  
14 [either 1 or 2; not both]

15 (1) (A) The firm meets two of the following three ratios: a ratio of total liabilities to net worth  
16 less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to  
17 total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;  
18 and

19 (B) The firm possesses net working capital and tangible net worth each at least six times the FA  
20 Amount; and

21 (C) The firm possesses tangible net worth of at least \$10 million; and

22 (D) The firm owns assets located in the United States amounting to at least 90 percent of its total  
23 assets or at least six times the FA Amount.

24 -OR-

25 (2) (A) The firm has a current rating for its most recent [long-term debt] issuance of AAA, AA,  
26 A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

27 (B) The firm possesses tangible net worth at least six times the FA Amount; and

28 (C) The firm possesses tangible net worth of at least \$10 million; and

(D) The firm owns assets located in the United States amounting to at least 90 percent of its total  
assets or at least six times the FA Amount.

Sincerely,  
[Name]  
[Title]  
[Company]